FULL BENCH

Before P. C. Jain, S. C. Mital and R. N. Mittal, JJ.

HARDWARI LAL,—*Petitioner.*

versus

SHRI G. D. TAPASE and others,—*Respondents.*

Civil Writ Petition No. 3658 *of* 1980.

September 16, 1981.

Maharshi Dayanand University Act (25 *of* 1975) *as amended by Haryana Ordinance* 5 *of* 1980 *and Haryana Act* 40 *of* 1980—*Sections* 3, 4 *and* 9-*A*—*The First Statutes of the Maharshi Dayanand University*—*Statutes* 2, 4(6) & (7) *and* 26—*Constitution of India* 1950—*Articles* 14 *and* 361—*Vice Chancellor appointed by the Chancellor for a period of three years with a promise that the term will be renewed*—*Power of renewal given to the Chancellor by the statute*—*Appointee acting on the assurance of the Chancellor and changing his position by resigning his seat from the Legislative Assembly*—*Term not renewed on the expiry of three years*—*Chancellor*—*Whether estopped from refusing to renew the term*—*Chancellor's assurance*—*Whether within the scope of his authority*—*Doctrine of promissory estoppel*—*Whether applicable*—*Appointment or continuance of a Vice Chancellor beyond the age of* 65 *years barred by section* 9-*A*—*Section* 9-*A*—*Whether applicable to a Vice Chancellor holding office at the time of introduction of this section*—*Provisions of section* 9-*A*—*Whether discriminatory and violative of Article* 14—*Governor* ex officio *Chancellor of the University*—*Immunity as envisaged in Article* 361(1)—*Whether available to the Governor acting as Chancellor.*

Held, that:

(1) under clause (7) of Statute 4 of the First Statutes of the Maharshi Dayanand University, the Chancellor is competent and has power to grant renewal of the term of the Vice Chancellor;

(2) it is quite evident that Chancellor had acted within the scope of his authority in laying down the term that the terms of the petitioner will be renewed and that the petitioner had acted on that promise/assurance and had changed his position by resigning his seat from the Legislative Assembly. In such a case estoppel will have to be sustained even if the same may be based on an assurance to the future because the promisor intended to be legally bound

and intended his promise to be acted upon with the result that it was so acted upon. It was a real promise—Promise intended to be binding, intended to be acted upon and in fact acted upon ;

(3) the provisions of section 9-A of the Maharshi Dayanand University Act, 1975 are not only to apply to the persons who are appointed Vice Chancellors after the promulgation of the Ordinance, but also to the persons who are in office on the date of promulgation ;

(4) the words 'continue in .... if he has attained the age of 65 years occurring in section 9-A of the Act as amended by the Ordinance and the Amendment Act are discriminatory and violative of Article 14 of the Constitution of India, 1950 as the same are designed to operate to the detriment of one and one person only, i.e. the person whose term had to be renewed as a result of the promise/assurance given by the Chancellor ;

(5) the powers and duties exercised and performed under the Statute by the Chancellor have absolutely no relation to the exercise and performance of power and duties of the office of the Governor ;

(6) no absolute immunity as envisaged in sub-clause (1) of Article 361 of the Constitution of India is available to the Governor for the acts done in exercise of the powers or in performance of the duties as Chancellor of the University. (Para 135).

Case referred by the Division Bench consisting of Hon'ble Mr. Justice Bhopinder Singh Dhillon and Hon'ble Mr. Justice M. R. Sharma, to a larger Bench on 10th December, 1980 for the opinion of an important question of law involved in the case. The Full Bench consisting of Hon'ble Mr. Justice Prem Chand Jain, Hon'ble Mr. Justice S. C. Mital and Hon'ble Mr. Justice Rajendra Nath Mittal has finally decided the case on merit on 16th September, 1981.

Petition under Article 226 of the Constitution of India praying that this Hon'ble Court may be pleased to :—

(a) *issue a writ of* mandamus *or any other appropriate writ, order or direction commanding the Respondent No. 1 to notify, the renewal of the petitioner's term as Vice-Chancellor for a period of three years commencing from 28th October,* 1980.

(b) *alternatively, declare that by virtue of the terms and conditions of the petitioner's appointment, set out in the order dated 27th October,* 1977 *issued under Statute* 4(6) *of the University Act, the petitioner's term as Vice-Chancellor stands automatically renewed for a period of three years from 28th October,* 1980, *and issue a writ of mandamus or any other appropriate writ or Order, or Direction commanding the Respondents and their officers and subordinates not to interfere with the functioning of the petitioner as Vice-Chancellor of Maharshi Dayanand University for a period of* 3 *years commencing from 28th October,* 1980 ;

(c) *quash the impugned Ordinance as being void and unconstitutional and issue a Writ of* Mandamus *or any other appropriate writ, direction or order which this Court may deem fit in the circumstances of this case, commanding the Respondents, their officers, subordinates and servants not to enforce, in any manner, the provisions of the impugned Ordinance against the petitioner* ;

(d) *strike down the impugned Act as void and unconstitutional and issue a writ of* Mandamus *or any other appropriate writ, direction or order which this Court may deem fit in the circumstances of this case, commanding the Respondents, their officers, subordinates and servants not to enforce, in any manner, the provisions of the impugned Act against the petitioner ;*

(e) *award costs of this petition and the proceedings arising therefrom or incidental thereto ; and*

(f) *pass such other order or orders as this Hon'ble Court may deem fit in the circumstances of this case.*

P. P. Rao, Sr. Advocate, with J. S. Malik, Bulganin Daulta, Advocates, *for the Petitioner.*

U. D. Gaur, A. G., Haryana, B. L. Gulati, D. A., Haryana, *for Respondents Nos.* 2 & 3.

Y. S. Chitale, with Sadhana Rama Chandran, Advocates, *for Respondent No.* 1.

JUDGMENT

Prem Chand Jain. J.

1. Shri Hardwari Lal has filed this petition under Article 226 of the Constitution of India calling in question the legality and constitutional validity of Haryana Ordinance No. 5 of 1980 (hereinafter called the Ordinance) and the Maharshi Dayanand University (Amendment) Act, 1980 (Haryana Act No. 40 of 1980) (hereinafter called the Amendment Act) and has also prayed for issuance of a mandamus directing respondent No. 1 to renew his term as Vice-Chancellor of the Maharshi Dayanand University, Rohtak (hereinafter called the University).

2. In order to appreciate the controversy, it is generally appropriate to give details of the allegations made in the petition, but so far as the present petition is concerned, I find that it may not be possible to do so at this stage and it would suffice if a few facts are mentioned as a preface, which are to the following effect.

3. Shri Hardwari Lal, petitioner, was appointed as Vice-Chancellor of the University on 28th October, 1977. The petitioner had been elected to the State Assembly in June, 1977 and had resigned the Assembly seat to accept the Vice-Chancellorship of the University in October, 1977, on the asking of Mr. H. S. Brar, the then Chancellor of the University, who specially invited him during the third week of October, 1977, to discuss the state of education in Haryana and made a compelling request to the petitioner to accept the Vice-Chancellorship either of Kurukshetra University or the University at Rohtak.

4. It is further averred in the petition that to make the offer attractive and to persuade the petitioner to give up politics and resign his seat in the Assembly to which he had been elected for six years, only four months earlier, Shri H. S. Brar, clothed with the statutory authority to appoint Vice-Chancellors at Kurukshetra and Rohtak Universities and to determine in his sole discretion the terms and conditions of their appointment, offered to the petitioner a salary of Rs. 4,000 per mensem exclusive of any pension which he might get in the event of his agreeing to resign his seat in the Haryana assembly, but the petitioner declined to accept a salary higher than the usual salary of Vice-Chancellors in Haryana and Punjab and

agreed to quit politics in order to take up the assignment at Rohtak on the conditions that, (i) he would get at least six years' tenure to enable him to build up the new University and (b), he would not be pushed about by the Government, during his stipulated tenure.

5. It is further averred, that the then Chancellor pointed out that according to the provisions of clause (7) of Statute 4 of the First Statutes of the Rohtak University, he would issue the notification regarding petitioner's appointment for a three-year term in the first instance, but would make the first term imperatively renewable in the 'terms and conditions of the appointment' to be determined by him under the authority of Clause (6) of Statute 4.

6. The petitioner has given reasons as to why did he feel compelled to secure the above assurance. The petitioner has further given details as to why did he agree to resign the hard-won Assembly seat which he had incidentally won as an Independent candidate in the 1977 Assembly Elections. He has also given details of undue political interference in the working of the University by the politicians and the facts going to show as to how efforts were being made to harass and denigrate him. Allegations of *mala fide* have also been made against respondents Nos. 1 and 2. The petitioner has also made reference to the earlier litigation which took place between him and the respondents. I have not given details of all these allegations as I would refer to the same at the appropriate time when I deal with the respective contentions of the learned counsel for the petitioner.

7. It is further averred that the petitioner was entitled, as a matter of right, to the renewal of his first term, but no notification in that respect was issued with the result that the petitioner was forced to file this petition on 13th October, 1980 for issuance of a writ of mandamus commanding respondent No. 1 to notify the renewal of the petitioner's term as Vice-Chancellor for a period of three years commencing from 28th of October, 1980. In the petition, an interim prayer was also made that since his term of office was to expire on 27th of October, 1980, therefore, *ad interim* order be issued allowing him to continue as Vice-Chancellor of the University. After issuing notice of motion, the petition was admitted to D.B. by the Bench on October 14, 1980, but the *ad interim* relief prayed for was declined. However, it was ordered that till the decision of the petition, the Secretary, Education Department, Haryana, would perform the duties of Vice-Chancellor.

8. Before the petition could be heard, the Governor of Haryana issued Ordinance No. 5 of 1980 on 1st of November, 1980, by which after Section 9 of the Maharshi Dayanand University Act, 1975, Section 9-A was inserted which reads as under:—

> "*Maximum age of Vice-Chancellor and Pro-Vice-Chancellor*: Notwithstanding anything to the contrary contained in any law, contract or the statutes, no person shall be appointed to, or continue in, the office of the Vice-Chancellor or Pro-Vice-Chancellor, as the case may be, if he has attained the age of sixty-five years".

On the basis of the aforesaid Ordinance, an application (C.M. No. 2010 of 1980) was filed in this Court on 4th of November, 1980 on behalf of the State praying that the writ petition had become infructuous and that the same be dismissed but that application was rejected and the matter was heard on merits by the Division Bench. Finding that important questions were involved, the matter was referred to be decided by a larger Bench on 10th of December, 1980. On 26th of December, 1980, the Ordinance was replaced by the Maharishi Dayanand University (Amendment) Act, 1980 (Haryana Act No. 40 of 1980). As the Ordinance was promulgated and the Amendment Act was enacted after the filing of the petition, the petitioner was allowed to suitably amend the petition. Now through the amended petition, which was put in on February 19, 1981, the petitioner has challenged the legality and constitutional validity of the Ordinance and the Amendment Act also.

9. The petition has been contested on behalf of all the respondents. Separate written statements have been filed by the Chancellor, respondent No. 1; Chief Minister of Haryana, respondent No. 2 and on behalf of the State of Haryana, respondent No. 3 by Joint Secretary, Education Department.

10. In the written statement filed by the Chancellor, Preliminary objections have been taken to the effect that no writ would lie against him because of the protection under Article 361 of the Constitution of India, that examining the validity of Ordinance No. 5 of 1980 is only academic as the same stands repealed by the Amendment Act, that no mandamus can be issued unless there is violation of some statutory obligation, that without declaring the Amendment Act ***ultra vires***, no writ can be issued and that it is settled law that the

motive which impelled the legislature to pass the law is really irrelevant in declaring that law *ultra vires.* if the legislature is competent to pass a law.

11. On merits, the material allegations made in the petition have been controverted and the firm stand taken is that renewal of the term is only when the first term is over as renewal pre-supposes that it is discretionary with the Chancellor to consider the matter afresh after the first term is over and that there cannot be a renewal of the term at the time, when the Vice-Chancellor is appointed initially. The allegations of *mala fide* have been emphatically denied.

12. The Chief Minister, Haryana, in his written statement has also taken somewhat similar type of preliminary objections which have been raised by respondent No. 1. So far as the averments on merits are concerned, respondent No. 2 has controverted them. He has also stoutly and firmly denied the allegations of *mala fide* made against him.

13. In the written statement filed on behalf of the State, again similar type of preliminary objections have been raised. On merits, the allegations made in the petition have been controverted and facts have been brought out to show that the issuance of the Ordinance and the enactment of the Amendment Act were not as a result of any bias against the petitioner but was as a result of a policy decision taken on the basis of the suggestions made earlier by the Committees constituted by the Government of India for making suggestions on the working of the Universities, which had favoured the idea of fixation of maximum age limit of the incumbent for the Vice-Chancellorship.

14. The petitioner sought to file lengthy replication to the aforesaid three written statements. As in the replication many fresh facts were raised, we did not permit the petitioner to file the replication. However, during the course of arguments, the learned counsel for the petitioner was permitted to make reference to some of the relevant facts from the replication which were necessary to determine the controversy.

15. On merits, the first contention raised by Shri P. P. Rao, learned counsel for the petitioner was that on the basis of the facts placed on the file, the petitioner was entitled to issuance of a writ

of mandamus, commanding respondent No. 1 to notify the renewal of the petitioner's term as Vice-Chancellor of Maharshi Dayanand University for a period of three years with effect from 28th of October, 1980. What was sought to be argued by Mr. Rao was that under Statute 4(7) of the First Statutes of the University, two terms of three years each could legally be given by the Chancellor as there is a power of renewal available to the Chancellor in the aforesaid Statute and that such a power could legally be exercised by the Chancellor even at the stage of initial appointment. In the alternative, it was submitted by the learned counsel that even if the Chancellor could not decide about the renewal of the term at the time of initial appointment, then also in the instant case, he (the Chancellor) by laying down a term in exercise of his power under Statute 4(6) that the term of the petitioner will be renewed, was legally bound by such a term and that it was not open to the Chancellor especially when the existence of the terms and conditions has not been disputed, to challenge the validity of his own power to lay down such a term. Further, the Chancellor by laying down such a term made a promise to the petitioner that his term will be renewed, that the petitioner acting on that promise, changed has position inasmuch as he resigned his seat from the Haryana Vidhan Sabha to which he had been elected for a period of six years and that the Chancellor on the principle of promissory estoppel was estopped from refusing to renew the term of the petitioner. The learned counsel had also urged that even if all the above mentioned contentions of his were found untenable. then also, the action of the Chancellor in granting renewal should be deemed to have been taken by granting relaxation in exercise of the power under Statute 26.

16. In reply to the aforesaid contentions of Mr. Rao, Dr. Chitale, learned counsel for respondent No. 1, submitted that the power to renew is really a power to make fresh appointment, that certain considerations are to be taken note of before exercising the power of renewal, that the words 'may renew' pre-suppose some conscious consideration before granting a renewal of the term, that under Clause (7) advance renewal or in other words, renewal of term at the time of initial appointment is not permissible, that a person appointed as Vice-Chancellor cannot claim as a matter of right renewal and that an authority by an order or contract cannot legally fetter in advance the future exercise of discretion when the statute itself suggests its exercise in future at an appropriate time.

17. Dr. Chitale also sought to support the aforesaid argument of his further contending that terms and conditions of appointment and term of appointment as used in clause (6) and (7) of Statute 4 are distinct, that the providing of the terms and conditions has been left completely with the Chancellor, but the power to fix a term has not been left to the discretion of the Chancellor, inasmuch as a term for a specific period is provided by Clause (7). What was intended to be argued by the learned counsel was that under Clause (6), no fetter has been put on the power of the Chancellor in laying down terms and conditions of the Vice-Chancellor at the time of appointment, but the power of the Chancellor is circumscribed by clause (7) of the Statute inasmuch as no appointment can be made by him for more than three years and that is why the Chancellor initially appointed the petitioner only for a term of three years. The learned counsel also went on to argue that there could be no estoppel with regard to an action which was *ultra vires* of the Statute and the plea that the term of renewal should be deemed to have been granted by the Chancellor by exercising the power of relaxation is wholly untenable.

18. For proper appreciation of the contentions advanced by the learned counsel for the parties before us and in order to find out as to which contention is more plausible, it is necessary to make reference to certain provisions of the Act and the Statute and also to the pleadings of the parties.

19. The Maharshi Dayanand University was established in May, 1976 by The Rohtak University Act, 1975 (Haryana Act No. 25 of 1975) (hereinafter referred to as the Act). Section 3 of the Act provides for the appointment of the first Chancellor and the first Vice-Chancellor by the Government, so also the first members of the Court, the Executive Council and the Academic Council. The Section further stipulates that the Rohtak University would be a body corporate and shall have perpetual succession and a common seal with power to acquire, hold and dispose of properties and to contract and may by the said name sue or be sued. Section 4 provides the limits of the area within which the University shall exercise its powers. Section 5 gives the details of the powers and the duties to be exercised and performed respectively by the University. Section 8 to which reference in particular was made, gives the designation of the persons who shall be the Officers of the University. It includes

the names of Chancellor and Vice-Chancellor also. Section 9 provides that the mode of appointment and functions of the officers of the University other than the Chancellor shall be prescribed by the Statutes and the Ordinance, in so far as they are not prescribed in the Act. It is also provided in the section that subject to the provisions of the Act, the powers and duties of the officers of the University, the term for which they shall hold office and the filling of casual vacancies in such offices shall be such as prescribed by the Statutes. Section 19 provides that the Chancellor may, at any time require or direct any officer or authority of the University to act in conformity with the provisions of this Act, and the statutes, ordinance and regulations made thereunder. It is further provided that the power exercised by the Chancellor under sub-section (I) shall not be called in question in any civil court. Section 22 prescribes the conditions of service of officers and teachers.

20. Coming to the first statutes of the University, we find that Statute 2 provides that the Governor shall be the *ex-officio* Chancellor of the University. Statute 3 lays down that the Chancellor by virtue of his office will be the head of the University and if present, would preside over the convocation of the University for conferring degrees and at all meetings of the Court. Statute 4 is the most important statute for the purpose of this case. Clauses (1) to (5) of this statute describe the status of the Vice-Chancellor, his powers and duties. Clauses (6) and (7), to which reference will have to be made repeatedly, may be reproduced *in extenso* and read as under:—

> "(6) The Vice-Chancellor shall be appointed by the Chancellor on the terms and conditions to be laid by the Chancellor.
>
> (7) The Vice-Chancellor shall hold office ordinarily for a period of three years, which term may be renewed."

Statute 5 relates to Pro-Vice-Chancellor. The only other statute which needs mention is statute 26, which gives the power of relaxation to the Chancellor and is reproduced as under :—

> "Notwithstanding the provisions of the aforesaid statutes the Chancellor shall be competent in exceptional cases, to relax any condition mentioned therein."

21. Coming to the facts of the case, I find that Shri M. L. Batra was appointed as the first Vice-Chancellor of this University on 9th

April, 1976. On 18th August, 1977, Shri Batra proceeded on leave. It appears that the then Chancellor was trying to find out some other eminent person to be appointed as the Vice-Chancellor of the University. It seems that the choice of the Chancellor fell on the petitioner, as on 25th October, 1977, a letter (Annexure P-4 to the petition) was written by the then Chancellor Shri H. S. Brar to the petitioner, which reads under:—

"My dear Ch. Sahib,

When you met me the other day, we talked about the state of school and University education in Haryana and about the need to improve things. I have since given further thought to the matter and I feel that with your long and varied experience of administration and education, you could make great contribution to the cause of education in the State, if you would take up one of the two Universities, Kurukshetra or Rohtak—as Vice-Chancellor.

I know about your interest in politics. But, I feel that you might be able to serve the State better as a Vice-Chancellor than as an M.L.A. Incidentally, while there is no legal bar to your continuing as an M.L.A., even after going to the University, it would seem more proper if you could persuade yourself to resign your seat in the Assembly and give all your time to the University.

I would expect you to let me have your reply without delay. With kind regards,

Yours sincerely,
H. S. BRAR."

On receipt of this letter, the petitioner sent a reply to the Chancellor on 26th October, 1977, which is in the following terms:—

"Respected Governor,

Kindly refer to your letter No. 11/PS Govr. 77/1116, dated the 25th October, 1977, regarding the Vice-Chancellorship of the Kurukshetra/Rohtak Universities.

I feel greatly encouraged by your good opinion of me and I feel honoured that you think me fit for the position of a Vice-Chancellor.

I practically founded the Kurukshetra University some 20 years ago and I should not like to go back to this now. I should prefer to go to Rohtak. I, of course, assume that :—

(i) I shall be given at least six years so that I can build up this new University. The three years term (ordinarily) which the Charter of the University mentions is much too brief for any body to build up the Institution, from a scratch;

(ii) Things at Rohtak have been unstable so far. I thus, shall be allowed to work without interference from the Government Secretariat.

I entirely agree with you that it will be improper for me to continue as an M.L.A., if I go to the University. I am, therefore, resigning my seat from the Assembly. I am writing in this connection to the Speaker of the Assembly to say that my resignation may be taken as being operative from the 1st of January 1978.

With kind regards,

Yours sincerely,
Sd./- Hardwari Lal."

On receipt of the aforesaid letter from the petitioner, a Notification, dated 26th October, 1977, appointing the petitioner as Vice-Chancellor of the University was issued, which is in the following terms:—

"In exercise of the powers conferred by sub-clause (6) of clause 4 of the 1st Statutes, as contained in Schedule to the Maharshi Dayanand University Act, 1975, the Chancellor of the Maharshi Dayanand University is pleased to appoint Shri Hardwari Lal to be the Vice-Chancellor of the Maharshi Dayanand University, Rohtak with immediate effect, for a period of three years.

2. His terms and conditions of appointment will be issued separately."

The petitioner, in pursuance of the aforesaid notification, took over charge as Vice-Chancellor of the University on 28th of October, 1977. In exercise of the powers under clause (6), the Chancellor had laid down terms and conditions of appointment of the petitioner. Besides providing for the pay and other things, the Chancellor also prescribed a term, which reads as under:—

> "Shri Hardwari Lal will be whole-time Vice-Chancellor and shall not engage himself directly or indirectly in any trade or business whatsoever without the prior permission of the Chancellor. The term of appointment will be for a period of three years, which term will be renewed."

22. The pleas taken in the petition on the basis of which the first contention on merits was raised by Mr. Rao, and to which specific reference was made at the time of arguments, read as under :—

> "Para 3(iv). To make the offer attractive and to persuade the petitioner to give up politics and to resign his seat in the Assembly, to which he had been elected for six years only four months earlier, Shri Brar, clothed with the statutory authority to appoint Vice-Chancellors at Rohtak and Kurukshetra Univerties and to determine, in his sole discretion, the terms and conditions of their appointment, offered to the petitioner a salary of Rs. 4,000 per mensem, exclusive of any pension which he might get in the event of his agreeing to resign his seat in the Haryana Assembly. The petitioner declined to accept a salary higher than the usual salaries of Vice-Chancellors in Haryana and Punjab, but agreed to quit politics in order to take up the assignment at Rohtak on the conditions that (a) he would get at least six years' tenure to enable him to build up the new University, and (b) he would not be pushed about by the Government, during his stipulated tenure.

Shri Brar pointed out that according to the provisions of clause (7) of Statute 4 of the University Act, he would issue the notification regarding the petitioner's appointment for a 3-years term, in the first instance, but would make the first term imperatively renewable in the "terms and conditions of the appointment" to be determined by him under the authority of clause (6) of Statute 4.

As Chancellor, Shri Brar had the statutory authority to relax any provision of the Statutes,—*vide* Statute 26 of the first Statutes.

* * * * * *

That the reasons why the petitioner felt compelled to secure the above assurances were:—

(a) The University had been established only 18 months earlier, against the explicit advice of the University Grants Commission, and had not yet been recognised by the Commission for receiving any central grants, without which no University could attain its full status. In fact, the University Grants Commission had stopped even the grants, which the Regional Post-Graduate Centre, Rohtak, made by the Haryana Government, the very base of the University, had been getting as a part of Kurukshetra University, until April, 1976. The petitioner also knew that the first Vice-Chancellor designate (Dr. P. N. Chhutani) had been dropped, even before he had actually taken over, the second (Shri M. L. Batra) had been chased out much before the expiry of his first term, a Pro-Vice-Chancellor (Dr. J. D. Singh) had been appointed for the purpose of chasing out the Vice-Chancellor for whom he (Dr. J. D. Singh) had been made to officiate, and he (the Pro-Vice-Chancellor) had turned the University, during 9 weeks of his officiating Vice-Chancellorship into a parochial and sectional institution. The Medical College, Rohtak, which along with the erstwhile Regional Post-Graduate Centre, constituted what had come to be called M. D. University, was operating under the shadow of an enquiry ordered to be made by an out sider. Even the question of the site for the University was awaiting final decision. The infant University was, thus be set with numerous problems and handicaps.

The petitioner could see that one three years' term would in no case suffice for him first to secure the necessary patronage of the University Grants Commission and to cleanse the Augean Stables and then to built up the University from a scratch. The petitioner did not, therefore, consider it worthwhile to sacrifice his earlier

occupation without being assured of a term of the length, adequate in his view.

* * * * * *

Knowing what he did about the shabby and fraudulent treatment meted out to Vice-Chancellors at Hissar, Kurukshetra and Rohtak in recent times, the petitioner was greatly hesitant about accepting the Vice-Chancellor's job in Haryana. It was, therefore, that he had not said "yes" to Shri J. L. Hathi's offer and had later felt compelled to discuss things threadbare with his successor Shri H. S. Brar, before making up his mind about accepting the preferred job. It was, in any case, for this reason that the petitioner had insisted on securing a written and unconditional assurance regarding the length of his tenure. Indeed, he would have never even thought of changing his profession, and would have never accepted the Chancellor's invitation to join as Vice-Chancellor at Rohtak, in spite of all its eagerness, if he had not been categorically and unconditionally given 6 years' tenure.

Para 3(vi):

The arrangement regarding the petitioner's appointment, substantively for six years, and the other terms and conditions of his service/appointment, as described in (v) above was formalised when (a) Shri Brar, the Chancellor of the University wrote to the petitioner a formal letter fervently offering him the appointment along with the advice that the petitioner might resign his seat in the State Assembly in order to give all his time to the University and (b) the petitioner formally accepted the appointment on the explicit conditions which he had previously mentioned verbally and to which Shri Brar, in his statutory capacity as the Chancellor of the University, and by virtue of his statutory powers under Statute 4(6) and Statute 26 of the 1st Statutes of the University, an integral part of the University's Act, had unconditionally agreed. In return, the petitioner agreed to resign and actually resigned his seat in the Haryana Assembly and also agreed to be bound by the condition that he would not engage in any other profession and would give all his time to the University, which was still in all embryonic state and had to be carefully tended.

* * * * * *

(Para 3A). That even after the terms and conditions of his appointment had been finally settled and formalised, the petitioner

had occasion to write to Shri H. S. Brar twice and in both these significant communications, the point that the petitioner had come to Rohtak as Vice-Chancellor for six years was thrown into bold belief."

* * * * * *

22. The stand taken by respondent No. 1 in his written statement with regard to the aforesaid pleas, is to the following effect:—

"(iv)(a): Under Statute 26 of the Maharshi Dayanand University Act, 1975, the then Chancellor could relax the provision and appoint him for six years but he did not do that.

(b) That vide notification No. HRB-EA-77/5545-5550, dated 26th October, 1977, the petitioner was appointed for a period of three years only.

(c) That renewal of a term is only after the first term is over. This pre-supposes that it is discretionary with the Chancellor to consider the matter afresh after the first term is over. There can be no renewal at the time the Vice-Chancellor is appointed initially.

In respect of sub-para (vi), it is denied that the petitioner's appointment was for six years it is also denied that this was ever formalized. The letter at Annexure P/4, dated 25th October, 1977 from Shri H. S. Brar making an offer of appointment did not contain any offer of appointment for a Tenure of six years. It is denied that while accepting the offer of appappointment the petitioner had made any explicit condition that he would accept the offer of Vice-Chancellorship on the basis of any explicit conditions which he had allegedly previously mentioned verbally or to which Shri H. S. Brar had agreed.

The copies of the letters exchanged by Shri H. S. Brar and the petitioner and the notification concerning the petitioner's appointment as Vice-Chancellor of M. D. University, Rohtak (at Annexure P/4) nowhere state that the appointment of the petitioner has been made for a term of six years. The substantive appointment order, dated 26th October, 1977 clearly states that the appointment is for a period of three years, the terms and conditions of appointment issued on 27th October, 1977, reiterate that the

appointment will be for a period of three years and it is further stated that this term will be renewed. Statute 4(7) of the M. D. University Act is reproduced below:—

> "The Vice-Chancellor shall hold office ordinarily for a period of three years, which term may be renewed."

The appointment order read with the provision of law quoted above made it clear that as per the provisions of law the appointment was for a period of three years and that at the end of this period of three years the term may be renewed.

The contents of para 3-A are admitted to the extent that Annexures P/5, P/6 and P/7 were received by my predecessor but he did not ever uphold the petitioner's contention that the petitioner was appointed for six years. It is denied that at any time Shri H. S. Brar stated that he had appointed the petitioner for a 6 years' tenure.

The M. D. University, Rohtak, had also issued a notification, dated 5th November, 1977 in which it had notified that the appointment of the petitioner was for three years. A copy of this notification is at Annexure R-1/1.

In respect of para 19, the answering respondent denies that under any provision of law the petitioner is entitled to continue as Vice-Chancellor for a period of 3 years with effect from 28th October, 1977. The petitioner's appointment was for 3 years and this period has lapsed on 27th October, 1980. The answering respondent is under no statutory duty to complete any procedural formalities or to issue any enabling notification under any provision of law.

The answering respondent denies in respect of para 25 that the petitioner was appointed for a term of six years. He was appointed for 3 years and the non-renewal of his term does not amount to any breach of his terms and conditions or to his removal from a public office. The answering respondent denies that the petitioner has any right to continue in office for more than a period of three years. The answering respondent denies that he is terminating the tenure of the petitioner much less arbitrarily and further submits that no rules of natural justice have been violated by the answering resopndent.

In respect of para No. 26, the answering respondent denies that the petitioner's term of appointment was initially for a period of six years. The answering respondent submits that no term or condition of appointment of the petitioner has been violated which requires to be enforced by a writ of mandamus."

23. On the respective contentions of the learned counsel for the parties, the following points would need determination, viz:—

(A) Is there any power under the Statute to grant renewal of the terms of the Vice-Chancellor?

(B) By making a promise to renew the term, is not the Chancellor estopped from refusing to renew the term on the doctrine of promissory estoppel?

(C) In case, such a power exists, then at what point of time the power of renewal of the term could be exercised?

(D) Could the power of renewal be exercised by the Chancellor at the time of initial appointment of a person as Vice-Chancellor?

(E) Assuming that the power of renewal could be exercised only on the expiry of the first term. then has not such a power of renewal been exercised by the Chancellor by relaxing the relevant statutory provision in exercise of his powers of relaxation under Statute 26?

(F) Is the action of the Chancellor in not renewing the term of the petitioner *mala fide.*"

24. Before I deal with the points enumerated above, it may be observed that though lengthy arguments were advanced by the learned counsel for the parties, yet on thorough consideration of the entire matter, I find that the case is not that complicated and that the same can straightaway be decided by making reference to clauses (6) and (7) of Statute 4 and the doctrine of promissory estoppel.

25. So far as the first point is concerned, it may straightaway be observed that Dr. Chitale appearing for respondent No. 1 did not

contest the competence of the Chancellor to grant renewal of the term. Even otherwise, a bare perusal of clause (7) of Statute 4 shows that the Chancellor is invested with the power to grant renewal of the term. Thus in view of this specific provision, the Chancellor has the power to grant renewal of the term.

26. Point (B) relates to the applicability of the doctrine of promissory estoppel. Before I deal with that aspect, it would be appropriate to analyse the provisions of clauses (6) and (7) of Statute 4 and notice some arguments of Dr. Chitale which he thought had some bearing on this point. A combined reading of the two clauses would show that the appointment of a Vice-Chancellor is to be made by the Chancellor ordinarily for a period of three years and on the terms and conditions to be laid down by him (the Chancellor), with a power to renew the term. These two clauses are independent and do not come in conflict with each other in any way. Clause (7) only standardise the tenure which otherwise could have been unreasonably short or long at the whim of the Chancellor. Clause (6) mentions the name of the appointing authority who is given an absolute power to lay down the terms and conditions of appointment.

27. The words 'may renew' occurring in clause (7) indicate existence of power of renewal. Under the scheme of the Act and the Statutes, the Chancellor plays a very important role. He is not merely a titular head. In the selection of the Vice-Chancellor, he is the sole judge and his opinion is final in all respects. In choosing a Vice-Chancellor, the main consideration to prevail upon the Chancellor is the interest of the University and if in a given case the services of a person cannot be procured without providing for him a longer period than the one prescribed in clause (7), then the Chancellor under the Statute would certainly be entitled, if he so chooses, to stipulate and agree that the terms of the appointee would be renewed.

28. By laying down a term that the term will be renewed, the Chancellor has done nothing more than making a promise to the appointee that on the expiry of the term of office, his term will be renewed. Such a promise, in the wake of the power available, under the Statute, could validly be made even at the time of initial appointment. By giving an assurance, the Chancellor is not actually renewing the term at the time of initial appointment. He is only making a promise. The act of actual renewal has to be done only when a notification in that respect is issued, which may be issued

a few months or a few days prior to the date of expiry of the terms. It is only then that the actual renewal of the term would take place.

29. As is evident from the contention, the main emphasis laid by Dr. Chitale was on the theory that the executive cannot, by contract or order, fetter in advance the future exercise of the statutory discretion where the statute itself contemplates its exercise at the appropriate time in future. According to the learned counsel, the expression "will be renewed" in the term has to be read as 'may be renewed' as the statute does not authorise the exercise of power of renewal at the time of initial appointment and the words 'will be renewed' would hardly be binding ; otherwise the matter of discretion would be covered into a matter of compulsion.

30. Dr. Chitale had drawn our attention to the judgment of the Supreme Court in *State of Tamil Nadu* v. *M/s. Hind Store etc.* (1) for the proposition that before passing an order of renewal, the work of the incumbent and certain other factors have to be taken into consideration. The relevant passage on which reliance was placed is at page 250 of the report and reads as under :

> "The next question for consideration is whether Rule 8-C is attracted when applications for renewal of leases are dealt with. The argument was that Rule 9 itself laid down the criteria for grant of lease and therefore rule 8-C should be confined in its application to grant of leases in the first instance. We are unable to see the force of the submission. Rule 9 makes it clear that a renewal is not to be obtained automatically, for the mere asking. The applicant for the renewal has, particularly to satisfy the Government that the renewal is in the interests of mineral development and that the lease amount is reasonable in the circumstances of the case. These conditions have to be fulfilled in addition to whatever criteria is applicable at the time of the grant of lease in the first instance, suitably adopted of course, to grant of renewal. Not to apply the criteria applicable in the first instance may lead to absurd results. If as a result of experience gained after watching the performance of private entrepreneurs in the mining of minor minerals it is decided to stop grant of leases in the private sector in the interest of conservation of the particular mineral resources, attainment of the object sought will be frustrated if renewal is to be

(1) 1981 S.C.A.L.E. 237.

granted to private entrepreneurs without regard to the changed outlook. In fact, some of the applicants for renewal of leases may themselves be the persons who are responsible for the changed outlook. To renew leases in favour of entrepreneurs without regard to the changed outlook. In fact, some of the applicants for renewal of leases may themselves be the persons who are responsible for the changed outlook. To renew leases in favour of each persons would make the making of Rule 8-C a mere exercise in futility. It must be remembered that an application for the renewal of a lease is, in essence an application for the grant of a lease for a fresh period. We are, therefore, of the view that Rule 8-C is attracted in considering applications for renewal of leases also."

In my view, the aforesaid observations are clearly distinguishable and have no applicability to the facts of the case in hand as the same have been made keeping in view the particular rules, especially rule 5, which talks of the procedure that was required to be followed before a lease could be renewed and also mentions the time when an application for renewal was to be made.

31. In support of the contention that the executive cannot by contract or order fetter in advance the future exercise of statutory discretion where the statute itself contemplates its exercise in future, the learned counsel had relied on the following judgments and the text-books:—

Rederiakti ebolaget Amphitrite v. *R.* (1-A), *Antenia Buttigieg* v. *Stephen H. Crose* (2), *Ransom and Luck, Ltd.* v. *Surbiton Borough Council,* (3) *William Cory and Son, Ltd.* v. *City of London Corporation* (4), *Howell* v. *Falmouth Boat Construction Ltd.,* (5), *Commissioners of Crown Lands* v. *Page* (6), *Southend-on-Sea Corporation* v. *Hodason (Wickfard) Ltd.* (7), *Cudgen Rutile (No. 2) Pty-Ltd. and another* v. *Chalk,* (8), *Ansett Transport Industries*

(1-A) (1921) All E.R. Rep. 542.
(2) A.I.R. (34) 1947 P.C. 29:
(3) (1949) 1 All E. R. 185.
(4) (1951) 2 All E. R. 85.
(5) (1051) 2 All. E. R. 278.
(6) (1960) 2 All. E. R. 726.
(7) (1961) 2 All. E.R. 46.
(8) (1974) 3 Aust L. R. 438.

(*Operations*) *Pty. Ltd.* v. *Commonwealth of Australia and others*, (9), *Halsbury's Laws of England*, 5*th ed.* (1) Para 34, Page 36. *Dee Smith's Judicial Review of Administrative Action* 4*th* ed. 317.

I do not propose to deal with these judgments individually as most of them have been considered and referred to in some of the judgments of the Supreme Court to which I would presently be adverting.

32. Moreover, I find that the aforesaid judgments are of no assistance to the learned counsel for respondent No. 1 as the same have been produced to support an argument which is proceeding on an assumption that the Chancellor had exercised his power of renewal at a stage when the same was not exercisable under the Statute and this assumption as indicated above, is without any foundation.

33. An argument had also been built that renewal is a fresh appointment and that there is no difference in grant and renewal. The learned counsel in support of his argument had relied on the judgment of the Supreme Court in *M. C. Chockalingam and others.* v. *V. Manich* v. *Sangam and others*, (10), wherein in para 17 of the report, it has been observed thus :—

> "We are also unable to accept the submission of Mr. Setalvad that the case of renewal of licence of this type is different from that of a grant. Rule 13 finds place in Part 1-A of the Rules with the title 'General'. Under Section 5 (2) (a) of the Act, the licensing authority shall not grant a licence unless it is satisfied that the rules made under this Act have been substantially complied with. We, thereof do not find any justification in making a distinction between grant and renewal of a licence under the provisions of the Act read with the Rules. Rule 13 is, therefore, clearly applicable to grant as well as to renewal of a licence."

A bare perusal of the aforesaid observations clearly shows that it was in the light of the provisions of that Act and the Rules that no distinction was made between grant and renewal of licence. But in the present case the word 'renewed' keeping in view the context in which it has been used, would mean allowing the incumbent to continue in office for another term on the same terms and conditions

(9) (1977) 17 Aust L.R. 513.

(10) A.I.R. 1974 S.C. 104.

and with all the benefits of continuity of service. If the word 'renewed' has to mean fresh appointment, then the appointee will lose all benefits of the continuity of service. But such is not the intention of the framers of the Statute. Reference in this connection may be made to an unreported judgment of this Court in *Dr. S. K. Dutta* v. *Chancellor, Kurukshetra University,* (11), wherein on the question of renewal it has been observed thus :—

> "Clause 4(VII) of the First Statute of the Kurukshetra University gives the Vice-Chancellor a term of office for three years which term may be 'renewed'. 'Renew' means in the dictionary sense 'make new' and also 'extend' or 'continue'. The Governor actually used the word 'extend' while acting under the clause. In this situation, we are of the opinion that the intention of the Governor was not to make a new appointment. This is also what the clause envisages because it talks of the renewal of the term and not of the 'appointment'. The petitioner is thus entitled to leave for the entire term (including that granted to him through extension) as calculated according to rules."

Another point that was sought to be raised by Dr. Chitale was, that the words 'terms and conditions' used in cl(6) are different from the word 'term' occurring in clause (7), that so far as the term of office is concerned, the same has been provided for in clause (7) and that under clause (6), no terms and conditions could be laid by the Chancellor with regard to the term of office. In my view, this point again is not sustainable. By laying down the terms and conditions of appointment, the Chancellor has not overstepped his authority nor has he violated the provisions of clause (7) which only prescribe the tenure for which ordinarily an appointment can be made. The Chancellor, by stipulating the term, has only assured the petitioner that he would get the second term also and laying down of such a term is not in violation of any statutory provisions.

34. Having noticed the provisions of clause (6) and (7) and some of the points raised by Dr. Chitala, I now advert to the question of the applicability of doctrine of promissory estoppel on which lot of arguments were advanced on either side. The learned

(11) C.W. 1685/78 decided on 22nd May, 1978.

counsel for the parties traced the origin of the doctrine of promissory estoppel by referring to several judgments both of foreign Courts and the Supreme Court, but I do not propose to deal with all the cases individually as I find that sufficient guidance is available from some of the judgments of the Supreme Court to which I am going to make reference presently.

35. The celebrated judgment in which the doctrine of promissory estoppel finds its most eloquent exposition is in *Indo-Afghan agencies* case (12), wherein Shah, J. speaking for the Court, observed at page 723 of the report thus :—

> "We are unable to accede to the contention that the executive necessity releases the Government from honouring its solemn promises relying on which citizens have acted to their detriment. Under our constitutional set up no person may be deprived of his right or liberty except in due course of and by authority of law ; if a member of the executive seeks to deprive a citizen of his right or liberty otherwise than in exercise of power derived from the law-common or statute—the Courts will be competent to and indeed will be bound to, protect the rights of the aggrieved citizen."

36. The next case to which reference may be made is in *M. P. Sugar Mills* v. *State of U.P. etc.* (13). In this judgment Bhagwati, J., on consideration of all the English judgments as well as the judgments of the Supreme Court with regard to Promissory Estoppel, has observed thus :

> "The law may, therefore, now be taken to be settled as a result of this decision, that where the Government makes a promise knowing or intending that it would be acted on by the promisee, and in fact the promisee acting in reliance on it, alters his position, the Government would be held bound by the promise and the promise would be enforceable against the Government at the instance of the promisee, notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required by Art. 299 of the constitution. It is elementary that in a republic governed by the rule of law, no one, howsoever high or low, is above the

(12) A.I.R. 1968 S.C. 718.

(13) A.I.R. 1979 S.C. 621.

law. Every one is subject to the law as fully and completely as any other and the Government is no exception. It is indeed the pride of constitutional democracy and rule of law that the Government stands on the same footing as a private individual so far as the obligation of the law is concerned : the former is equally bound as the latter. It is indeed difficult to see on what principle can a Government committed to the rule of law, claim immunity from the doctrine of promissory estoppel ? Can the Government say that it is under no obligation to act in a manner that is fair and just or that it is not bound by considerations of "honesty and good faith"? Why should the Government not be held to a high "standard of rectangular rectitude while dealing with its citizens"? There was a time when the doctrine of executive necessity was regarded as sufficient justification for the Government to repudiate even its contractual obligations, but, let it be said to the eternal glory of this court, this doctrine was emphatically negatived in the Indo-Afghan Agencies case (A.I.R. 1968 S.C. 718) and the supremacy of the rule of law was established. It was laid down by this court that the Government cannot claim to be immune from the applicability of the rule of promissory estoppel and repudiate a promise made by it on the ground that such promise may fetter its future executive action. If the Government does not want its freedom of executive action to be hampered or restricted, the Government need not make a promise knowing or intending that it would be acted on by the promisee and the promisee would alter his position relying upon it. But if the Government makes such a promise and the promisee acts in reliance upon it and alters his position, there is no reason why the Government should not be compelled to make good such promise like any other private individual. The law cannot acquire legitimacy and gain social acceptance unless it accords with the moral values of the society and the constant endeavour of the Courts and the legislatures must, therefore, be to close the gap between law and morality and bring about as near as approximation between the two as possible. The doctrine of promissory estoppel is a significant judicial contribution in that direction. But it is

necessary to point out that since the doctrine of promissory estoppel is an equitable doctrine, it must yield when the equity to so requires. If it can be shown by the Government that having regard to the facts as they have subsequently transpired, it would be inequitable to hold the Government to the promise made by it, the Court would not raise an equity in favour of the promisee and enforce the promise against the Government. The doctrine of promissory estoppel would be displaced in such a case because, on the facts, equity would not require that the Government should be held bound by the promise made by it. When the Government is able to show that in view of the facts which have transpired since the making of the promise, public interest would be prejudiced if the Government were required to carry out the promise, the court would have to balance the public interest in the Government carrying out a promise made to a citizen which has induced the citizen of act upon it and alter his position and the public interest likely to suffer if the promise were required to be carried out by the Government and determine which way the equity lies. It would not be enough for the Government just to say that public interest requires that the Government should not be compelled to carry out the promise or that the public interest would suffer if the Government were required to honour it. The Government cannot, as Shah, J., pointed out in the Indo-Afghan Agencies case, claim to be exempt from the liability to carry out the promise "on some indefinite and undisclosed ground of necessity or expediency", nor can the Government claim to be the sole judge of its liability and repudiate it" on an *ex parte* appraisement of the circumstances". If the Government wants to resist the liability, it will have to disclose to the court what are the subsequent events on account of which the Government claims to be exempt from the liability and it would be for the Court to decide whether those events are such as to render it inequitable to enforce the liability against the Government. Mere claim of change of policy would not be sufficient to exonerate the Government from the liability; the Government would have to show what precisely is the changed policy and

also its reason and justification so that court can judge for itself which way the public interest lies and what the equity of the case demands. It is only if the court is satisfied, on proper and adequate material placed by the Government, that overriding public interest requires that the Government should not be held bound by the promise but should be free to act unfettered by it, than the court would refuse to enforce the promise against the Government. The court would not act on the mere *ipse dixit* of the Government, for it is the court which has to decide and not the Government whether the Government should be held exempt from liability. This is the essence of the rule of law. The burden would be upon the Government to show that the public interest in the Government acting otherwise than in accordance with the promise is so overwhelming that it would be inequitable to hold the Government bound by the promise and the court would insist on a highly rigorous standard of proof in the discharge of this burden. But even where there is no such overriding public interest, it may still be competent to the Government to resile from the promise "on giving reasonable notice, which need not be a formal notice, giving the promisee a reasonable opportunity of resuming his position "provided of course, it is possible for the promisee to restore *status quo ante*. If, however, the promisee cannot resume his position, the promise could become final and *Vide* Ajayi v. *Briscoe* (11)".

37. The last case to which reference may be made is in *M/s. Jit Ram Shiv Kumar and others* v. *The State of Haryana and others*, (12), wherein on consideration of the entire case law, the scope of the plea of doctrine of promissory estoppel against the Government was summed up as follows :

"(1) The plea of promissory estoppel is not available against the exercise of the legislative functions of the State.

(14) (1964) 3 All. E. R. 556.
(15) A.I.R. 1980 S.C. 1285.

(2) The doctrine cannot be invoked for preventing the Government from discharging its functions under the law.

(3) When the officer of the Government acts outside the scope of his authority, the plea of promissory estoppel is not available. The doctrine of *ultra vires* will come into operation and the Government cannot be held bound by the unauthorised acts of its officers.

(4) When the officer acts within the scope of his authority under a scheme and enters into an agreement and makes a representation and a person acting on that representation puts himself in a disadvantageous position, the court is entitled to require the officer to act according to the scheme and the agreement or representation. The officer cannot arbitrarily act on his mere whim and ignore his promise on some undefined and undisclosed grounds of necessity or change the conditions to the prejudice of the person who had acted upon such representation and put himself in a disadvantageous position.

(5) The officer would be justified in changing the terms of the agreement to the prejudice of the other party on special considerations such as difficult foreign exchange position or other matters which have a bearing on general interest of the State."

38. Keeping in view the law enunciated by the Supreme Court, I would now proceed to deal with the facts of the case in hand. On 27th October, 1977, the Chancellor in exercise of his power under clause (6) laid down a term that the 'term of the petitioner will be renewed'. The wording of the term and use of the word 'will' clearly indicate that the Chancellor definitely wanted to bind himself by exercising the statutory power of renewal available to him. By incorporating this term the Chancellor made a promise and gave an assurance in unequivocal terms that the term of the petitioner will be renewed. It is evident from letter, dated 26th October, 1977, that the then Chancellor treated the case of the petitioner as an exceptional one because of his (petitioner's) being an eminent educationist and capable administrator and in order to procure his services, a promise was made for the grant of a second term. It is not that the Chancellor had no power to stipulate such a term as

this term owes its legal efficacy to clauses (6) and (7) which confer a power on the Chancellor to renew a term and also invest him with unfettered power to lay down terms and conditions on which the appointment is to be made. The terms and conditions laid by the Chancellor have become conditions of service of the petitioner, which are enforceable in the Court of law. The petitioner through this petition is praying for the enforcement of his legal right which is flowing from a term laid down under the statutory power. The theory of fettering in advance the future exercise of statutory discretion would apply where a functionary of Government by an act not permissible in law, tries to bind the Government. While considering the plea of promissory estoppel, which plea is available against respondent No. 1 only, the Government is not concerned at all. The Government is only concerned with the validity of the Ordinance and the Act, which is entirely a separate and independent issue. That is why, on this issue no arguments were advanced by the learned Advocate-General, and the matter was left to be dealt with entirely by Dr. Chitale, learned counsel for respondent No. 1.

39. The question as to the applicability of the doctrine of promissory estoppel against the legislative or executive acts of the Government does not strictly arise in this case as estoppel is not being pleaded against any legislative or executive act of the Government or its functionaries. It is being pleaded against an authority which has its own independent existence under the Statute, the authority which performs its functions and acts under the provisions of the Act and the Statute without any interference from any other authority. The assurance/promise was given by the then Chancellor on which the petitioner acted and changed his position. As observed earlier, the Chancellor did not act outside the scope of his authority and that being so, the doctrine of promissory estoppel would apply with full rigour and force in the instant case. As is evident from the argument of Dr. Chitale the only ground on which the issue is being contested on behalf of respondent No. 1 is that the Chancellor had no power to grant renewal at the time of initial appointment. It is not the case of the Chancellor that although promise was made by the then Chancellor, but the petitioner had disentitled himself in equity to get renewal because of valid and sound reasons which did not permit his continuance for another term in the interest of the University. The Court would always decline a relief in equity if circumstances are shown that the continuance of a person as Vice-Chancellor would not be in the

interest of the University. The Chancellor is not powerless and has ample power to protect the interest of the University. Even during the tenure of office or after the grant of renewal, the Chancellor can always remove a Vice-Chancellor for his misconduct. See in this connection the judgment of the Supreme Court in *Dr. Bool Chand* v. *Chancellor, Kurukshetra University,* (16), where it has been observed thus:—

> "The power to appoint a Vice-Chancellor has its source in the University Act: investment of that power carries with it the power to determine the employment; but the power is coupled with duty. The power may not be exercised arbitrarily; it can be only exercised for good cause, i.e. in the interests of the University and only when it is found after due enquiry held in manner consistent with the rules of natural justice, that the holder of the office is unfit to continue as Vice-Chancellor."
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> * * * * * * *
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> "The University Act, the Statutes and the Ordinances do not lay down the conditions in which the appointment of the Vice-Chancellor may be determined; nor does the Act prescribe any limitations upon the exercise of the power of the Chancellor to determine the employment. But once the appointment is made in pursuance of a Statute, though the appointing authority is not precluded from determining the employment, the decision of the appointing authority to terminate the appointment may be based only upon the result of an enquiry held in a manner consistent with the basic concept of justice and fairplay."
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> * * * * * *.
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> In the very scheme of our educational set-up at the University level, the post of Vice-Chancellor is of very great importance, and if the Chancellor was of the view after making due enquiry that a person of the antecedents of the appellant was unfit to continue as Vice-Chancellor, it would be impossible, unless the plea that the Chancellor

(16) A.I.R. 1968 S.C. 292.

acted maliciously or for a collateral purpose is made out, for the High Court to declare that order ineffective."

40. Thus, when the facts of the case are viewed in the light of the observations of the Supreme Court in general and the fourth principle enunciated in *Jit Ram's case* in particular, it is quite evident that the Chancellor had acted within the scope of his authority in laying down the term that the term of the petitioner will be renewed and that the petitioner had acted on that promise/ assurance and had changed his position. In the instant case, estoppel will have to be sustained even if the same may be based on an assurance to the future because the promisor intended to be legally bound and intended his promise to be acted upon; with the result that it was so acted upon. It was a real promise—promise intended to be binding, intended to be acted upon and in fact acted upon.

41. It was also sought to be argued by Dr. Chitale that in the instant case, even if all the averments made in the petition are accepted, then also the petitioner has not raised a question of estoppel at all; that the petitioner has tried to raise the issue of promissory estoppel in his pleadings, but from the correspondence which was exchanged between the petitioner and the Chancellor, no inference can be drawn that any promise was given by the Chancellor to the petitioner on the basis of which he changed his position to his detriment. Making pointed reference to letter dated 25th of October, 1977 (Annexure P/4) the learned counsel submitted that only an offer was made to the petitioner to take up the Vice-Chancellorship of one of the two Universities, Kurukshetra or Rohtak and further a suggestion was made that though it may not be a legal bar, yet it would seem proper if the petitioner could resign the seat in the Assembly. Adverting to the reply of the petitioner, dated 26th of October, 1977, the learned counsel submitted that on his own assumption only a suggestion had come from the petitioner that he would get six years as three years' period as mentioned in the charter, would be too brief for anybody to build-up the institution and the other factor mentioned in the letter by the petitioner was that he should be allowed to work without interference from the Government Secretariat.

42. The learned counsel further elaborated the point by contending that the petitioner resigned the seat not because he was

to get a six years' period but as he wished to devote his whole time in building up the University and that the six years' offer was never made by the Chancellor nor was the suggestion of the petitioner in this respect accepted by him (Chancellor). The learned counsel also drew our attention to letter (Annexure P/6) addressed to the Chancellor wherein the petitioner had written that if he (petitioner) was no longer wanted in the University, then he might be paid his emoluments for the remainder of his six years' term and be relieved. From this letter, the learned counsel wished to emphasise that the petitioner was more keen to get money than to get the renewal of his term. Reference was also made to letters dated 5th September, 1980 (Annexure P. 38 page 197), dated 13th September, 1980 (Annexure P. 42, page 215), dated 21st September, 1980 (Annexure P. 36, page 186), dated 24th September, 1980 (Annexure P. 43, page 216), dated 4th October, 1980 (Annexure P. 45, page 219), dated 7th October, 1980 (Annexure P. 26, page 153) and dated 8th October, 1980 (Annexure P. 40, page 212) respectively, to show that in none of these letters there was any indication that the petitioner had resigned his seat in the Legislative Assembly because he was to get two terms or six years' tenure as Vice-Chancellor and that a promise/assurance had been given by the Chancellor in that respect.

43. The learned counsel, on the question that by resigning the seat from the Legislative Assembly, no prejudice had been caused to the petitioner, drew our attention to the affidavit filed on behalf of the Chancellor wherein material allegations made in the petition and which have been reproduced in the earlier part of the judgment with regard to the promissory estoppel have been denied. The learned counsel had also submitted that as an M.L.A., the petitioner would have only drawn an amount of Rs. 78,000 as emoluments while as a Vice-Chancellor for a period of three years, he had already drawn an amount of Rs. 1,59,000 (approximately) as salary. This amount he had drawn in addition to the T.A. and leave encashment benefits.

44. On the other hand, it was submitted by Mr. Rao that all the ingredients of the doctrine of promissory estoppel had been pleaded in the petition ; that a promise was made by the Chancellor to the petitioner that his term will be renewed by stipulating such a term in the terms and conditions which were laid down in exercise of the statutory power and that the petitioner acted upon that

promise and thereby altered his position ; that the petitioner's terms and conditions were laid on 27th of October, 1977 and were conveyed the same day to him ; that the petitioner had submitted his resignation on the basis of that promise and thereby altered his position to his detriment ; that by going back on the promise, the petitioner who resigned his seat from the Legislative Assembly to which he had been elected as an independent candidate, has been prejudicially affected as he no longer remains a Vice-Chancellor and has also lost his hold in politics.

45. After giving our thoughtful consideration to the entire matter, we find no merit in the contention of the learned counsel for the respondent. In order to determine if the doctrine of promissory estoppel is attracted to the facts of this case or not, the pleadings, the documents and other factors have to be considered not in isolation but their effect has to be seen cumulatively. When the whole case is viewed in its totality, then the only possible conclusion that can be drawn is that the petitioner was given an assurance by the then Chancellor that his term will be renewed and that it was on the basis of that assurance that the petitioner thought of accepting the Vice-Chancellorship of the University and resigning his seat from the Legislative Assembly. The petitioner, besides being an able educationalist, has been a shrewd and seasoned politician. If he had not been given the assurance or promise that he would get two terms as Vice-Chancellor, then he would not have resigned his seat from the Legislative Assembly. The assumption of the petitioner that he would get six years' tenure is not unfounded as foundation for such an assumption is available from the terms and conditions. It would be pertinent to observe that in the return filed by respondent No. 1, it has not been specifically denied that no assurance was given by the then Chancellor to the petitioner : rather the whole case is based on the main legal argument that such a term could not be incorporated nor could the then Chancellor fetter his discretion at the time of the initial appointment which was exercisable in future. The petitioner in his pleadings, the relevant portion of which has been reproduced in the earlier part of the judgment, has clearly laid foundation for the applicability of doctrine of promissory estoppel and those pleas find full support from the term that the 'term will be renewed' and the subsequent correspondence which transpired between the petitioner and the Chancellor, wherein the petitioner had been

requesting the Chancellor to renew the term on the basis of that term. There cannot be any gainsaying that the petitioner did act on the assurance and alter his position and that by itself would be sufficient to attract the doctrine of promissory estoppel as has been held by their Lordships of the Supreme Court in an unreported decision in *Bhim Singh and others* vs. *The State of Haryana and others* (16a), wherein it is observed thus :—

> "By virtue of Ex. P. 1, the State (respondent) held out certain specific promises as an inducement for the appellants to move into a new Department (Agriculture Department). After they had gone over to the Agriculture Department, the State, by virtue of its Ex. P. 3, sought to go back upon the earlier promise made in Ex. P. 1. The appellants having believed the representation made by the State and having further acted thereon cannot now be defeated of their hopes which have crystallised into rights thanks to the application of the doctrine of promissory estoppel. Therefore, it is not open to the State, according to the law laid down by this Court, to backtrack. We, therefore, direct the State to implement Ex. P. 1 and confer such rights and benefits as are promised thereunder in entirety."

Moreover, to say that it was not to the prejudice of the petitioner to have changed his position, is again not correct. To the petitioner who has been seasoned politician, causing of prejudice has to be presumed as by accepting the job of Vice-Chancellor he had to forgo his political career. It was rightly contended by Mr. Rao that the petitioner has lost all contacts in his constituency and it may not now be possible for him to re-establish his political career, that the prejudice caused to the petitioner cannot be judged from this fact alone that he got more emoluments as Vice-Chancellor than what he would have got as an M.L.A. and that on the facts proved the only inference that could be drawn was that on the basis of the promise/assurance the petitioner changed his position to his detriment. In this view of the matter, I have no hesitation in holding that the petitioner has factually made out a case for the applicability of doctrine of promissory estoppel and no ingredients are wanting in that respect.

46. In the view I have taken on points (A) and (B), it is not necessary to record any finding on points (C), (D) and (E).

(16a) C.A. 1949/79.

47. This brings me to the contention of Mr. Rao on point (F), that non-grant of renewal is as a result of the bias of the Chancellor, respondent No. 1, against the petitioner and that the act of respondent No. 1 in not renewing the terms suffers from the vice of *mala fide*. What was submitted by Mr. Rao was that Shri G. D. Tapase assumed charge of the office of Governor of Haryana on 28th February, 1980; that the Chancellor immediately thereafter had started interfering in the affairs of the University and wished to project that he should have more powers and in that respect had sent certain suggestions, a copy of which has been attached as Annexure P-22 with the petition; that in order to show his superiority respondent No. 1 had once told the petitioner as to how he had suspended Dr. Hajela, the Vice-Chancellor of Allahabad University; that the petitioner was never allowed any opportunity to meet the Chancellor in private; that the Chancellor differed with the petitioner on the question of reservation of seats/posts for members of Scheduled Castes/Scheduled Tribes; that the Chancellor wished to nominate one Shri P. S. Azad to the Court which was not liked by the petitioner, who wrote a D.O. letter to the Chancellor dated 19th August, 1980 (Annexure P. 29); that again the petitioner registered his protest with regard to the nomination of certain M.L.As. by the Chancellor on the University Bodies; that the petitioner wrote a D.O. letter dated 9th September, 1980 (Annexure P. 35) again registering his protest about the statement made by the Chancellor to the press, to the effect that the report of Dulat Commission had been received and was under process; that the Chancellor, who belongs to Scheduled Caste and is a Maharashtrian, wanted one Mr. Patil from the State to be admitted into the Medical College as the latter was also a Scheduled Caste, but the petitioner could not oblige the Chancellor; that similarly there was a tussle between the petitioner and the Chancellor on the question of admission of one Rajinder Samohtra, son of Gian Chand, an I.A.S. Officer, for admission to M.D. Course and that the petitioner again could not oblige Bharat Tapase son of respondent No. 1, in giving admission to one Anurag Srivastava to M.B.A. Course.

48. It was on the basis of the aforesaid facts that the petitioner claims that the action of the Chancellor in not renewing the term suffers from the vice of *mala fide*. I am afraid, I am unable

to agree with this contention of the learned counsel for the petitioner. The Chancellor in his affidavit has denied all the allegations. There can be no gainsaying that the Chancellor has certainly a right being the Head of the Institution, to send his suggestions. It appears that the petitioner feels that except him, no other officer in the University should have a say in the administration or should make any valuable suggestions. The pleas on which the petitioner depends for proving his allegation of *mala fide* not only remain unsubstantiated but are flimsy. The Chancellor has a right to nominate persons to the Court. It is not necessary for him to consult the Vice-Chancellor. The Chancellor can always have *bona fide* difference of opinion with the Vice-Chancellor. The Chancellor can even make recommendations to the Vice-Chancellor regarding the admission of certain students in the University. Regarding the making of the statement to press on Dulat Commission report, the petitioner is forgetting that Shri G. D. Tapase must have made that statement as Governor and not as Chancellor. The Chancellor is not under the authority of the Vice-Chancellor: rather the acts of the Vice-Chancellor can always be scrutinised by the Chancellor whether the same are within the four corners of the Act, the Statute and the Ordinance or not. The Vice-Chancellor cannot dictate the Chancellor as to how has he to conduct himself regarding the affairs of the University. In this view of the matter, I find no merit in the plea of the petitioner that the Chancellor did not renew his term as he had bias against him and hold that the allegations of *mala fide* are baseless and have not been substantiated.

49. This brings me to the challenge made against the validity of Maharashi Dayanand University (Amendment) Ordinance, 1980 (An Ordinance to amend the Act) which was promulgated by the Governor of Haryana in exercise of his powers under Clause (1) of Article 213 of the Constitution of India on 1st of November, 1980, and of the Amendment Act by which after Section 9 of the Act, the following Section was inserted :—

> "9-*A. Maximum age of Vice-Chancellor and Pro-Vice-Chancellor* :
>
> Notwithstanding anything to the contrary contained in any law, contract or the Statutes, no person shall be appointed to or continue in the office of the Vice-Chancellor or

Pro-Vice-Chancellor, as the case may be, if he has attained the age of 65 years."

The Ordinance was to come into force at once. Thereafter on 23rd of December, 1980, the Maharshi Dayanand University (Amendment) Act, 1980 (An Act to amend the 1975 Act) was enacted resulting into the repealing of the aforesaid Ordinance. Section 9-A in the Amendment Act, which has been inserted after Section 9 of the Act, is exactly in the identical language as that of the Ordinance. In the Amendment Act, there is no date on which it was to come into force. Hence, in view of Section 3(b) of the General Clauses Act, the Amendment Act would be deemed to have come into force on the date when it was published in the Official Gazette i.e. 26th December, 1980.

50. Before I advert to the contentions raised regarding the validity of the Ordinance and the Act, an argument of Mr. Rao may be noticed that the provisions of Section 9-A of the Amendment Act are to apply only to the persons who were appointed as Vice-Chancellor, after the promulgation of the Ordinance. The learned counsel referred to the averment made in the written statement filed on behalf of respondent No. 3 wherein, in reply to the plea taken in para 30(G) of the petition, it has been stated thus :—

"It is evident from the above recommendations of the Committee that the retirement age of the Vice-Chancellor should be fixed at 65 years. Since comprehensive amendment of the Maharshi Dayanand University Act was to take time and a vacancy in the office of the Vice-Chancellor, Maharshi Dayanand University, Rohtak, has arisen on 27th of October, 1980 and another vacancy of Vice-Chancellor in the Kurukshetra University, Kurukshetra, was to arise on 5th of April, 1981, therefore, it was thought expedient by the Government to decide the point relating to the fixation of maximum age of the Vice-Chancellor .....".

On the basis of the aforesaid averment, the learned counsel submitted that a vacancy had already existed in the University, that vacancy was likely to be filled and that Section 9-A was to cover the appointment of a person, which was to be made in that

vacancy which had already come into existence, i.e., on 27th of October, 1980 on the expiry of the term of the petitioner. The learned counsel analysed the language of section 9-A and submitted that the words "has attained the age," would apply to a person who was appointed after the promulgation of the Ordinance and who would attain the age during the tenure of his office. According to the learned counsel, the petitioner when he was appointed as Vice-Chancellor, was already 67 years of age and that if the provisions of Section 9-A were to be made applicable to him, then instead of the words "has attained", the words "had attained" would have been used. It was further contended by the learned counsel that the words "continue in" again, would apply to fresh appointment because a vacancy had already existed and that when an appointment would be made in that vacancy, then the appointee, under the provisions of Section 9-A of the Act would not be entitled to continue in the office if he, during his tenure, for which he was appointed, attains the age of 65 years. Great emphasis was laid on the fact that firm stand has been taken on behalf of respondents Nos. 2 and 3 that a vacancy had come into being on 27th of October, 1980 when the petitioner had relinquished the charge of his office and if the Ordinance was issued knowing that a vacancy existed, then the only possible construction that could be put on the provision of section 9-A would be that it was to apply to an incumbent who was to be appointed after the coming into force of the Ordinance.

51. After giving my thoughtful consideration to the entire matter, I find no merit in the contention of the learned counsel. Plain analysis of the Section, without non-obstante clause, would show that no person shall be appointed to or continue in the office of the Vice-Chancellor or Pro-Vice-Chancellor if he has attained the age of 65 years. So far as the appointment of a person to the office, who has attained the age of 65 years is concerned, there is no problem because the Section is very clear. The question that needs determination is as to what meaning should be given to the words "continue in". If these words have to be interpreted merely on the basis of the averment made in the written statement and reproduced above, then there might be some merit in the contention of the learned counsel for the petitioner, but for the correct interpretation that has to be put on the words' 'continue in' and "has attained" a fact which is patent on the record, has to be kept

in mind that is, that the petitioner had filed this petition in this Court claiming a relief that a direction be given to respondent No. 1 to issue a notification renewing the term and in case this relief is granted by the Court, then on the date on which the Ordinance was promulgated, the petitioner would be deemed to be in office. Though a positive stand has been taken by the State about the existence of the vacancy, yet the Court cannot be oblivious of the fact that the purpose of the issuance of notification was also to meet a situation if the same arose in the event of the success of the petition. If the language of the section without non-obstante clause and treating the petitioner to be in office on the date of promulgation of the Ordinance, is analysed then the words 'continue in' have necessarily to apply to the person who happens to be in office and not only to the appointments to be made after the promulgation of the Ordinance. There can hardly be any doubt that the Ordinance was issued to cover the case of the petitioner also ; otherwise the non-obstante clause is not only superfluous but meaningless too. The non-obstante clause has been introduced in order to overcome the term, which has been prescribed by the Chancellor in the terms and conditions by which it has been stipulated that the term of the petitioner will be renewed.

52. Mr Rao, learned counsel for the petitioner, was right in contending that the words "continue in" would apply to a person who is in office on the date of promulgation of the Ordinance and as earlier observed, if the petition succeeds, then the petitioner would be continuing in office on the date when the Ordinance was promulgated.

53. The whole case of the learned counsel proceeds on the assumption that there is a vacancy in existence on the date when the Ordinance was promulgated, but as earlier observed the factum of the pendency of this petition has also to be kept in mind. The matter may further be elucidated by taking this example. Suppose, after the 27th of October, 1980 and before the promulgation of the Ordinance, a person had been appointed as Vice-Chancellor at the age of 64½ years for a term of three years, could it be said in such a case that the provisions of the Section would not apply to such an appointee. Obviously, the answer has to be in the negative because a person is continuing in office on the date of promulgation of the Ordinance. Similarly, in the event of the success of this petition,

the petitioner would be continuing in office on the date of promulgation of the Ordinance. Thus, viewed, from any angle, I find no merit in the contention of the learned counsel that the provisions of Section 9-A are not to apply to the petitioner and have to be made applicable to any appointment made after the promulgation of the Ordinance.

54. I would now deal with the contention raised by Mr. Rao regarding the validity of the Act and the Ordinance, which is founded on Article 14 of the Constitution.

55. The scope and effect of Article 14 as it protects all persons against discriminatory and hostile legislation have been discussed and explained by the Supreme Court in a series of cases. Among the important judgments of the Supreme Court relating to the doctrine of equality before law which have been treated as leading authorities, must be mentioned the following:—

Budhan Chaudhry and others v. *State of Bihar* (17) ; *Shri Ram Krishna Dalmia and others* vs. *Shri Justice S. R. Tendolkar and others* (18).

In *Budhan Choudhry's case,* the Supreme Court summed up the law as follows:—

> "It is now well established that while Article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classsification two conditions must be fulfilled, namely (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) that that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different bases, namely, geographical, or according to objects or occupations or the like. What is necessary is that there must be anexus between the basis of classification and the object of the Act under consideration. It is also well established by the decisions of this Court that

(17) AIR 1955 S.C. 151.

(18) A.I.R. 1958 S.C. 538.

Article 14 condemns discrimination not only by substantive law but also by a law of procedure."

In *Shri Ram Krishna Dalmia's case*, (supra), the Supreme Court after quoting the above passage, proceeded to observe as follows:—

"The principle enunciated above has been consistently adopted and applied in subsequent cases. The decisions of this Court further establish—

(a) that a law may be constitutional even though it relates to a single individual if, on account of some special circumstances or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself;

(b) that there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles;

(c) that it must be presumed that the Legislature understands and correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds;

(d) that the Legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest;

(e) that in order to sustain the presumption of constitutionality the Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every stage of facts which can be conceived existing at the time of legislation; and

(f) that while good faith and knowledge of the existing conditions on the part of a Legislature are to be presumed, if there is nothing on the face of the law or the surrounding circumstances brought to the notice of the Court on which the classification may

reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporations to hostile or discriminating legislation.

The above principles will have to be constantly borne in mind by the Court when it is called upon to adjudge the constitutionality or any particular law attacked as discriminatory and violative of the equal protection of the laws.

(12) A close perusal of the decisions of this Court in which the above principles have been enunciated and applied by this Court will also show that a statute which may come up for consideration on a question of its validity under Art. 14 of the Constitution may be placed in one or other of the following five classes:—

(1) A statute may itself indicate the persons or things to whom its provisions are intended to apply and the basis of the classification of such persons or things may appear on the face of the statute or may be gathered from the surrounding circumstances known to or brought to the notice of the Court. In determining the validity or otherwise of such a statute the Court has to examine whether such classification is or can be reasonably regarded as based upon some differentia which distinguishes such persons or things grouped together from those left out of the group and whether such differentia has a reasonable relation to the object sought to be achieved by the statute, no matter whether the provisions of the statute are intended to apply only to a particular person or thing or only to a certain class of persons or things. Where the Court finds that the classification satisfies the tests, the Court will uphold the validity of the law, as it did in *Chiranjitlal* v. *Union of India* (B) (Supra), *State of Bombay* v. F. N. Balsara (C) (Supra), *Kedar Nath*

Bajoria v. *State of West Bengal* (19), *V. M. Syed Mohammad & Company* v. *State of Andhra*, (20) and *Budhan Choudhry* v. *State of Bihar* (A) (Supra).

(ii) A statute may direct its provisions against one individual person or thing or to several individual persons or things but no reasonable basis of classification may appear on the face of it or be deducible from the surrounding circumstances, or matters of common knowledge. In such a case the Court will strike down the law as an instance of naked discrimination, as it did in *Ameerunniss Begum* v. *Mahboob Begum* (21) *and Ramprasad Narain Sahi* v. *State of Bihar* (22).

(iii) A statute may not make any classification of the persons or things for the purpose of applying its provisions but may leave it to the discretion of the Government to select and classify persons or things to whom its provisions are to apply. In determining the question of the validity or otherwise of such a statute the Court will not strike down the law out of hand only because no classification appears on its face or, because discretion is given to the Government to make the selection or classification but will go on to examine and ascertain if the statute has laid down any principle or policy for the guidance of the exercise of discretion by the Government in the matter of the selection or classification. After such scrutiny the Court will strike down the statute if it does not lay down any principle or policy for guiding the exercise or discretion by the Government in the matter of selection or classification, on the ground that the statute provides for the delegation of arbitrary and uncontrolled power to the Government so as to enable it to discriminate between persons or things

(19) 1954 S.C.R. 30.
(20) 1954 S.C.R. 1117.
(21) 1953 S.C.R. 404.
(22) 1953 S.C.R. 1129.

similarly situate and that, therefore, the discrimination is inherent in the statute itself. In such a case the Court will strike down both the law as well as the executive action taken under such law, as it did in *State of West Bengal* v. *Anwar Ali Sarkar* (D) (supra) *Dwarka Prasad* v. *State of Uttar Pradesh* (23) *Dhirender Kumar Mandal* v. *Superintendent and Remembrancer of Legal Affairs* (24).

(iv) A statute may not make a classification of the persons or things for the purpose of applying its provisions and may leave it to the discretion of the Government to select and classify the persons or things to whom its provisions are to apply but may at the same time lay down a policy or principle for the guidance of the exercise of discretion by the Government in the matter of such selection or classification; the Court will uphold the law as constitutional, as it did in *Kathi Raning Rawat* v. *The State of Saurashtra* (E) (supra).

(v) A statute may not make classification of the persons or things to whom their provisions are intended to apply and leave it to the discretion of Government to select or classify the persons or things for applying those provisions according to the policy or the principle laid down by the statute itself for guidance of the exercise of discretion by the Government in the matter of such selection or classification. If the Government in making the selection or classification does not proceed on or follow such policy or principle, it has been held by this Court, i.e. in *Kathi Raning Rawat* v. *The State of Saurashtra* (E) (supra) that in such case the executive action but not the statute should be condemned as unconstitutional."

56. We have, therefore, to approach the problem posed before us bearing in mind the above principles laid down by the Supreme

(23) 1954 S.C.R. 803.
(24) 1955-1 S.C.R. 224.

Court insofar as they may be applicable to the facts of the present case.

57. It was contended by Mr. Rao, learned counsel that the petitioner had acquired a vested right to hold the office of the Vice-Chancellor, for a period of three years more, on the basis of the promise/assurance given by the Chancellor to renew his term, that such a right could not be taken away during the currency of the period by any legislative enactment, that the provisions of section 9-A so far as they provide that no person shall continue in office who has attained the age of 65 years, are primarily and only aimed at the petitioner as on the date when the legislation was brought, by virtue of the terms and conditions laid down by the Chancellor, the petitioner was to continue as Vice-Chancellor for another term of three years, that the petitioner, if at all, could be removed from his office by the Chancellor in the terms of law laid down in *Bool Chand's* case, but now in view of the provisions of section 9-A, on the date of the promulgation of the Ordinance or on the date when the Act was published and came into force, the petitioner would be deemed to have been removed from the office of the Vice-Chancellor, that the only object of the legislation was to ease out the petitioner and that there is no nexus or connection between the basis of the classification and the object of the legislation. It was further vehemently contended by the learned counsel that though it was open to the Legislature in an appropriate case to make certain provisions applicable to only one individual or a group of individuals, yet the classification that is effected by the Statute has to be a classification founded on intelligible differentia and that differentia must have a rational relation to the object sought to be achieved by the Statutes. Applying the test laid down by the Supreme Court, the learned counsel urged that the impugned legislation must be considered to be violative of Article 14 of the Constitution.

58. On the other hand, it was submitted by the learned Advocate-General that the fixing of the age by enacting section 9-A is not arbitrary as the same has been fixed keeping in view the reports of the eminent persons and also the report of the Sub-Committee of which the petitioner was the Chairman, that the legislation is not aimed at the petitioner, but has been made with regard to the office of the Vice-Chancellor, that the legislation does not make any distinction between the sitting Vice-Chancellor and the Vice-Chancellor to be appointed after the enactment and that the

legislation has not been aimed at particularly against the petitioner though incidentally it has affected him adversely.

59. Dr. Chitale supported the stand taken by the learned Advocate-General and butterassed his argument by contending that the legislation applies universally to everyone who was and is to occupy the office, that the stand of the petitioner is not only untenable but unreasonable also as what he wishes the Legislature to do, is to carve out an exception for him and make special enactment which could facilitate him to continue in the said office, that if the plea of the petitioner is accepted, then at no point of time would the Legislature be able to make a law as it would invariably affect a person in office, that no vested right has accrued to the petitioner in the instant case, that fixation of age limit resulting in reduction of period of tenure is not a punishment, nor does it constitute removal and that the Act is a valid piece of legislation and has been enacted with a view to achieve a laudable object for which repeatedly emphasis has been laid by various Committees.

60. I now proceed to consider as to whether the petitioner has been able to establish that the words 'continue in.... if he has attained the age of 65 years' in section 9-A so far as they are made applicable to him are discreminatory and, as such, violative of Article 14 of the Constitution.

61. The petitioner was appointed Vice-Chancellor on 27th October, 1977, for a period of three years, which tenure was to be renewed for another term of three years. In the earlier part of the judgment I have already held that the petitioner is entitled to the renewal of the term on the basis of the promise made and assurance given by the then Chancellor and on account of that finding the petitioner is entitled to continue and would be deemed to have continued as Vice-Chancellor with effect from 27th October, 1980, for another period of three years. Normally, the petitioner would be entitled to continue in that post for the full term which will expire only at the end of October, 1983. Now this term has been abruptly cut short by issuing the impugned Ordinance on 1st November, 1980, by which after section 9, section 9-A has been introduced, which puts a bar on a person to continue as Vice-Chancellor who has attained the age of 65 years. This Ordinance was later on replaced by the Amendment Act on 26th December, 1980.

62. The Statement of Objects and Reasons, which necessitated the insertion of section 9A, as given in the Bill, which was introduced in the Vidhan Sabha for amending the Act, reads as under:—

> "The Act and Statutes of Maharishi Dayanand University, Rohtak did not provide any retirement age for the Vice-Chancellor and Pro-Vice-Chancellor. The Education Commission (1964-66) appointed by the Government of India and the Committee on the Governance of Universities and Colleges (1971) appointed by University Grants Commission had recommended that the retirement age of the Vice-Chancellor should be prescribed at 65 years. Keeping in view the expediency of the circumstances the Governor of Haryana promulgated the Maharishi Dayanand University (Amendment) Ordinance, 1980 (Haryana Ordinance No. 5 of 1980) to amend the Maharishi Dayanand University Act, 1975, by way of insertion of following section in the Haryana Act 25 of 1975:—
>
> 9A. *Maximum age of Vice-Chancellor and Pro-Vice-Chancellor.*—Notwithstanding anything to the contrary contained in any law, contract or the Statutes, no person shall be appointed to, or continue, in the office of the Vice-Chancellor, or Pro-Vice-Chancellor, as the case may, be, if he has attained the age of sixty-five years."

From the aforesaid statement, it is evident that as no age of retirement was provided for the post of Vice-Chancellor and Pro-Vice-Chancellor and as the Education Commission appointed by the Government of India and the Committee on the Governance of Universities and Colleges (1971) appointed by the University Grants Commission had prescribed the retirement age of a Vice-Chancellor at 65 years, it was thought expedient to make the necessary amendment in the Act and it was this object which resulted in the promulgation of the Ordinance and the Amendment Act.

63. In the written statement, the stand taken on behalf of respondent No. 3 with regard to the promulgation of the Ordinance and the enactment of the Amendment Act, is as follows:—

> "With regard to para 30-E of the petition it is submitted that in order to make comprehensive amendments, in the light

of the guidelines/recommendations of the reports of (a) Education Commission, (b) Report of the Committee on Model Act for Universities and (c) the report of the Committee on Governance of Universities and Colleges, Part I, the Haryana Government constituted a Committee,—*vide* notification No. 45/1-80-Ed-(6), dated 8th August, 1980 comprising the petitioner as its Chairman and 8 others members. It may further be submitted that the Committees mentioned at (a) and (c) in this para have recommended 65 years as the maximum age for the Vice-Chancellor to hold office. The Committee on Model Act for Universities in its Report had also favoured the idea of fixation of maximum age limit for the incumbent of the Vice-Chancellorship. * * * *

* * * * * *

The allegation of the petitioner that the Government of Haryana has been contemptuous of the recommendations of the Gajendragadkar Committee regarding the Governance of Universities, is wrong and hence denied. As is evident from the submission made above, the Government has already constituted a Committee, consisting of 9 members including the petitioner as its Chairman, to suggest necessary amendments in the Maharishi Dayanand Universities keeping in view the guidelines of the aforesaid Committee including the Gajendragadkar Committtee.

* * * * * *

It is submitted that University Grants Commission,—*vide* its letter dated 2nd April, 1979 had agreed, in principle, to declare the Maharishi Dayanand University, Rohtak, fit to receive Central assistance in terms of section 12-A of the University Grants Commission Act, provided that the State Government/University amend the Act, and Statutes of the University in accordance with the general observations made by the Education Commission (1964-66) appointed by the Government of India and the Committee on Governance of Universities and Colleges (1971), appointed by the University Grants Commission. The Education Commission in this regard in its report, has observed:—

'The retirement age for the Vice-Chancellor should be 65 years, an exception being made in the case of

exceptionally qualified person of all-India eminance." The Report of the Committee on Governance of Universities and Colleges has observed as under :—

> In regard to the question of prescribing an age limit of retirement for Vice-Chancellor it may be observed that where the post of Vice-Chancellor is honorary and the Vice-Chancellor is expected and required to work voluntarily, it may not be realistic to lay down any age limit. We may add that some of the distinguished full-time salaried Vice-Chancellors who at the time of their appointment or during their tenure had crossed the age of 65 years are known to have rendered signal service to their respective Universities. Nevertheless, we think in view of the arduous duties, the office of the Vice-Chancellor should be whole-time salaried one, and the Vice-Chancellor should retire on completing the age of 65 years.'

It is evident from the above recommendations of the Committees that the retirement age of the Vice-Chancellor should be fixed at 65 years. Since comprehensive amendment of the Maharishi Dayanand University Act was to take time and a vacancy in the office of the Vice-Chancellor, Maharshi Dayanand University Rohtak, has arisen on 27th October, 1980 and another vacancy of Vice-Chancellor in the Kurukshetra University, Kurukshetra was to arise on 5th April, 1981, therefore, it was thought expedient by the Government to decide the point relating to the fixation of maximum age of Vice-Chancellor. * * * * * * *

The contention of the petitioner that no legislation extraordinary or ordinary was at all needed is wrong, misconceived and hence denied. It is submitted that the said ordinance (now Act No. 40 of 1980) had not been issued in respect of the petitioner only, but it will regulate all the future appointments of Vice-Chancellor and Pro-Vice-Chancellors."

64. From the pleas reproduced above, it is again quite clear that the firm stand taken on behalf of the State is that the promulgation of the Ordinance and the enactment of the Amendment Act

was to give effect to the recommendation made earlier by the Education Commission and the Committee on the Governance of Universities and colleges that the retirement age of the Vice-Chancellors should be fixed at 65 years and that the impugned legislation is not at all aimed at the petitioner, but is to regulate all the future appointments of Vice-Chancellors and Pro-Vice-Chancellors.

65. Before adverting to the merits of the contention, it may be made clear that the Education Commission was appointed as far back as 1964, which had recommended the retirement age at 65 years, while the Committee on the Governance of Universities and Colleges was constituted in the year 1971, which again had suggested the retirement age at 65 years. But in spite of both these reports, the Act which came into force in the year 1975, under which the University was established, did not provide for any retirement age. It appears that these reports remained lying in a cold storage and were not given effect to by the Legislature either at the time of the enactment of the Act or thereafter, and it was only on 1st November, 1980, and that too in the shape of an Ordinance that the retirement age of the Vice-Chancellor was fixed at 65 years. This is how the impugned legislation had come into being.

66. Coming to the merits of this matter, on consideration of the entire material, in the light of the facts of the case in hand and the law enunciated by their Lordships of the Supreme Court, we find considerable force in the contention of the learned ccunsel, Mr. Rao.

67. The first question that needs determination is whether by the impugned legislation, has any distinction been made between sitting Vice-Chancellor and the Vice-Chancellors to be appointed thereafter and in case such a distinction has been made, then is there any rational relation of the differentia to the object sought to be achieved? As is evident from the contention of the learned Advocate-General, no distinction has been made between sitting Vice-Chancellor and the Vice-Chancellors to be appointed after the enactment nor is the legislation aimed against the petitioner. If the case has to be judged in the light of the phraseology used in the section, then there may be some merit in the contention of the learned Advocate-General, but if the impact and the ultimate effect of the legislation is seen, then the argument of the learned Advocate-General loses all its force. For the proposition that it is not the phraseology but the effect of the law which has to be seen,

reference may be made to the following observations of the Supreme Court in *Khandige Sham Bhat and another* vs. *Agricultural Income-tax Officer, Kasargod and another* (23), which read as under:—

> "Though a law *ex facie* appears to treat all that fall within a class alike, if in effect it operates unevenly on persons or property similarly situated, it may be said that the law offends the equality clause. It will then be the duty of the court to scrutinise the effect of the law carefully to ascertain its real impact on the persons or property similarly situated. Conversely, a law may treat persons who appear to be similarly situate differently; but on investigation they may be found not to be similarly situate. To state it differently, it is not the phraseology of a statute that governs the situation but the effect of the law that is decisive".

Coming to the impugned provision, a little scrutiny of the same would clearly show that the words 'continue in if he attains the age of 65' are solely meant for the petitioner and none else. The first term of the petitioner was to expire on 27th of October, 1980, and on the basis of the promise, he was entitled to get the renewal of the term. If the renewal had been granted, then he would have continued as Vice-Chancellor for another term of three years. As the term was not renewed, the present petition was filed. In the event of the petitioner getting the relief claimed, he would be deemed to be continuing Vice-Chancellor for another term. In other words, on 1st of November, 1980, when the Ordinance was promulgated, the petitioner would be Vice-Chancellor in office and the words 'continue in' would apply only to him.

68. As is evident from the contentions of the learned counsel for the respondents, the firm stand taken by them is that no distinction has been made between the sitting Vice-Chancellor and the Vice-Chancellors to be appointed in future inasmuch as the words' 'continue in if he attains the age of 65' are not only to apply to the petitioner but to the future appointees also. In my opinion, the stand taken by the learned counsel for the respondents is not sustainable. Though the language of the Section is couched in such a manner so as to give an impression that the impugned provisions

(25) A.I.R. 1963 S.C. 591.

are also to apply to future appointees, yet the impact and ultimate effect of the legislation is only on the petitioner. There can be no gainsaying that in the wake of the provisions of Section 9-A, the Chancellor is normally expected to appoint a person as Vice-Chancellor for a term which he is able to complete before attaining the age of 64. It is again equally clear that an appointee to this high office would also not ordinarily accept an office the tenure of which he is unable to complete. In this situation, there may not be any occasion for the applicability of the words 'continue in' so far as the future appointees are concerned. I do not agree with the learned Advocate-General that the legislation is not aimed at particularly against the petitioner though it may be affecting him also adversely. Rather the legislation so far as it uses words 'continue in', in the circumstances of the case, is only directed against the petitioner and petitioner alone and is making a positive distinction between the sitting Vice-Chancellor and the Vice-Chancellors to be appointed after the enactment.

69. Further, the petitioner is not wanting any exception to be carved out in his favour in order to facilitate his continuing in the office, as was contended by Dr. Chitle. The petitioner is only pleading that the impugned legislation is discriminatory and hostile against him and he has been successful in establishing the same. It is correct that in view of the law laid down in *Ram Krishna Dalmia's* case (*supra*), a legislation can relate to single individual, but then there have to be some special circumstances or reasons applicable to him and not applicable to others, which may warrant the treatment of that individual as a class by himself. In the instant case, the only purpose sought to be achieved through the legislation is to remove the petitioner. The post which the petitioner was holding is a tenure post and the petitioner as a result of the promise, has acquired a right to continue in the post.

70. Mr. Gour, learned Advocate-General, had also drawn our attention to Ordinance No. 4 of 1980 issued with regard to Kurukshetra University wherein section 8-A, which is exactly in similar terms as section 9-A, has not introduced, in order to show that the petitioner alone has not been singled out and that age limit has also been fixed in the case of the vice-Chancellor of Kurukshetra University. In our view, the issuance of this Ordinance is of no assistance in upholding the *vires* of the impugned legislation. In

Kurukshetra University, the Vice-Chancellor's term was to expire on 5th of April, 1981. There was absolutely no occasion for issuing an Ordinance and introducing section 8-A in respect of that University on Ist of November, 1980, especially when the Legislative Assembly was to meet in December, 1980, when the Act of the University could be suitably amended. Further, the Vice-Chancellor of Kurukshetra University was much below the age of 65 years and in his case, the words 'continue in' would be meaningless. Moreover, after the expiry of his tenure on 5th of April, 1981, a fresh appointment, if any, would have been made by the Chancellor in the light of provisions of section 8-A. Thus the issuance of Ordinance and putting of the words 'continue in' in section 8-A of the Kurukshetra University Act were nly with a view to give out an impression that the amendment was being made in respect of all the Vice-Chancellors and that the petitioner was not being singled out.

71. The next question that needs determination is whether there is a reasonable basis for grouping the petitioner as a class by himself and does that reasonable basis appear either in the Statute itself or is deducible from other surrounding circumstances ? Again, the answer has to be in the negative.

72. The amendment in the Act has been brought in on the basis of the reports of the Commission and the Committee as a result of which the retirement age has been fixed at 65, but nowhere in these reports any indication is available that a person who was validly appointed should not be allowed to complete his tenure in the event of his attaining the age of 65 years. The Vice-Chancellor holds very important and honoured position in the University and this office in the various Universities all over the country has always been manned by jurists or eminent and able educationalists. The choice of the person to be appointed as Vice-Chancellor is the sole Prerogative and within the absolute discretion of the Chancellor. By bringing a legislation of the kind which virtually results in the removal of the incumbent instantaneously, no reasonableness can be attributed. The dominant intention appears to be to remove the petitioner through this colourable legislation. If the petitioner was not liked and was misconducting hisemlf, then he could certainly be removed in terms of the law laid down in *Bool Chand's case* (supra). As a result of the impugned legislation, the petitioner on Ist November, 1980 would cease to hold the office of the Vice-Chancellor. The effect of the legislation is that the incumbent

would be on the road and would not even get breathing time for making alternative arrangements for his living etc. The Commission and the Committee had only recommended the retirement age to be fixed, but their reports could not be used for the purpose of bringing in a legislation which could make a mockery of the high office of the Vice-Chancellor and could result in inflicting a punishment of removal by cutting short the period of his tenure. I do not see any policy underlying the Act justifying this differential treatment accorded to the petitioner. While all the Vice-Chancellors appointed under the Act would hold office for the full period of their tenure for which they are appointed, the petitioner is being literally forced out of office on the day the Ordinance is promulgated.

73. Further, as to why the petitioner has been singled out and distinguished from the Vice-Chancellors, to be appointed after the enactment, remains unexplained. The petitioner, on the date of initial appointment, was of 67 years of age. For the full period of his first term, he had fully discharged the functions of his office. There is no allegation nor is there any suggestion that he is not physically or mentally fit.

74. To further show the unreasonableness and arbitrariness of the impugned legislation, I propose ot take an example on which questions were also put to the learned counsel for the respondents. Suppose on the basis of the reports etc., the impugned legislation had been brought in on 1st November, 1977, i.e., five daws after the initial appointment of the petitioner, then could it be said that the petitioner who was above 67 years of age at the time of the initial appointment, would not continue in office and would cease to be a Vice-Chancellor? Could such a legislation be defended by putting up a defence that the same was not aimed at the petitioner though it was likely to affect him incidentally ? Could it be said that there is a reasonable basis for grouping the petitioner as a class by himself? Could it be said that there was a reasonable nexus of the legislation with the object sought to be achieved ? On a reasonable approach, the answer to all these questions has to be in the negative. If this legislation had come into being on 1st of November, 1977, then the same would have been struck down on the ground that it had been brought in only with a view to remove the petitioner. If this could be the result with regard to the legislation which it had been brought immediately after the initial appointment of the peitioner, then I

fail to understand now the present legislation would be good which has been brought in after five days of the renewal of the term of the petitioner. I cannot, for a moment, appreciate as to on what basis a legislation can be supported, which results into snapping of the statutory term on the 5th day of its start. There can be no gainsaying that the service of the petitioner is sought to be terminated forthwith by enacting section 9-A of the Act. In other words, by the impugned legislation a device has been adopted for terminating the services of the petitioner.

75. It would not be out of place to observe that the words "continue in" appear to have been incorporated in the impugned provision as there must have been an apprehension that in this petition is allowed, then the petitioner would be deemed to continue in office as Vice-Chancellor. In other words, the present legislation is only to cover a situation which may arise in the event of the success of the petition, as it is then only that the petitioner would be continuing as Vice-Chancellor. Further, the *non obstante* clause in the section, again has been added in order to avoid the term incorporated in the terms and conditions on the basis of which this petition has been filed.

76. Moreover, except the Statement of Objects and Reasons, which has been reproduced in the earlier parts of the judgment, no other surrounding circumstances were brought to our notice to support the discriminatory legislation. But Mr. Rao, learned counsel for the petitioner, did point out the following facts in support of the plea raised by the petitioner.

77. On 10th of September, 1979, a statement alleged to have been made by respondent No. 2, appeared in the newspaper that the petitioner was being suspended as he was unwilling to go on leave, though on 13th September, 1979, a statement was issued by respondent No. 2 denying the making of any such statement. Apprehending the suspension, the petitioner filed C.W.P. No. 3228 of 1979 in this Court, on which an *ad interim* order staying his suspension was passed. In response to the notice of motion issued, the Chancellor pleaded that so far as he was concerned, no action was under contemplation against the petitioner, with the result that the petition was dismissed *in limine* on 20th September, 1979.

78. However, on the next day, i.e., 21st September, 1979, the Chancellor suspended the petitioner pending enquiry against him by

the Commission of Enquiry set up by the Government. The petitioner again filed a petition C.W.P. No. 3385 of 1979 in this Court, calling in question the legality of the suspension order. The Motion Bench issued notice of motion and also granted *ad interim* stay of the operation of the order of the petitioner's suspension. The writ petition was contested on behalf of the respondents, which was ultimately allowed on the ground that there was no power of suspension with the Chancellor under the Act and accordingly the order of suspension was set aside on 16th November, 1979.

79. The matter did not rest here as 8 days after the decision of the writ petition, an Ordinance (No. 11 of 1979) was promulgated empowering the Chancellor to (a) suspend the Vice-Chancellor; (b) to change the terms and conditions of his appointment and (c) to terminate Vice-Chancellor's services on three months' notice or on payment of three months' salary. It would be pertinent to point out at this stage that no similar Ordinance was issued in respect of Kurukshetra University and Mr. Rao was right in contending that pattern of uniformity advocated by the State is only a farce. Facing some action on the basis of the Ordinance, the petitioner approached the Supreme Court and filed a petition (CWP No. 1518/1979) for the striking down of Ordinance No. 11 of 1979. A prayer for the issuance of a writ restraining the Chancellor from giving effect to the provisions of the said Ordinance was also made, but that prayer was declined with the observations that as and when any action is taken against the petitioner under the impugned Ordinance, a prayer for stay may be made. The petitioner had also filed S.L.P. No. 10323 of 1979 against the order of this Court dated 16th November, 1979 on the ground that the High Court should have also decided the allegations of *mala fide* and the question of the tenure to which the petitioner was entitled. As no action was taken on the basis of the Ordinance and the same was allowed to lapse, the petitioner withdrew both the petitions before the Supreme Court on 18th of April, 1981.

80. The aforesaid facts again lend support to our view that the dominant intention is to remove the petitioner through this colourable legislation and that words 'continue in' in the impugned provision are aimed at the petitioner only.

81. The only relevant case, which has some bearing and to which reference may be made in detail is in *Dinnapati Sadasiva Reddi, Vice-Chancellor, Osmania University* versus *Chancellor,*

Osmania University and others (26). The facts of that case are as follows.

82. Dinnapatti Sadasiva Reddy, appellant, was appointed Vice-Chancellor of the Osmania University by order dated 30th April, 1964, passed by the Governor of Andhra Pradesh, in his capacity as Chancellor of the said University, for a term of 5 years. The term of the office was to expire at the end of April, 1969. During the middle of 1965, certain amendments were sought to be introduced in the Act by providing for the removal of the Vice-Chancellor by the Chancellor from office under certain circumstances. There was also a proposal to reduce the term of office of the Vice-Chancellor from 5 years to 3 years, from the date of his appointment, and for provisions being made enabling the Government to give directions to the University relating to matters of policy to be followed by it. The amendments sought to be introduced in the Act, appear to have come in for considerable criticism from several quarters. But ultimately the Andhra Pradesh Legislature passed the Osmania University (Amendment) Act, 1966 (Act II of 1966), amending the Osmania University Act of 1959 in certain particulars. The said amendments were to the effect that the Vice-Chancellor shall not be removed from office, except as provided for in section 12(2) of the Amended Act. The term of office was also fixed at 3 years under the amended section 13. The Osmania University Act, was again amended by the Osmania University (Second Amendment) Act, 1966. Under this amendment section 13A was enacted. In brief, that section was to the effect that the person holding the office of the Vice-Chancellor, immediately before the commencement of the amending Act of 1966, was to hold office only until a new Vice-Chancellor was appointed under sub-section (1) of section 12 : and it also provided that such appointment shall be made within 90 days after such commencement. There was a further provision that on the appointment of such new Vice-Chancellor, and on entering upon his office, the person holding the office of Vice-Chancellor immediately before such appointment, shall cease to hold that office. As the amendment introduced, adversely affected the appellant, he filed a writ petition praying for the issue of a writ or order declaring section 5 of the Osmania University (Second Amendment) Act,1966, which introduced section 13A in the original Act, as unconstitutional and void. In that writ petition, he challenged the validity of section 13-A, on several grounds. On consideration

(26) A.I.R. 1967 S.C. 1305.

of the entire matter, the High Court of Andhra Pradesh came to the conclusion that section 5 of the Second Amendment Act introducing section 13-A in the original Act was not vitiated by any infirmity as alleged by the appellant, and finally dismissed the appellant's writ petition. Dissatisfied from the judgment of the High Court, the appellant approached the Supreme Court. The main ground of attack on behalf of the appellant in appeal again based upon Article 14 of the Constitution. On consideration of the respective contention of the learned counsel for the parties, Vaidialingam J., speaking for the Court, observed, thus:—

> "In our view, the Vice-Chancellor, who is appointed under the Act, or the Vice-Chancellor who was holding that post on the date of the commencement of the second Amendment Act, form one single group or class. Even assuming that the classification of those two types of persons as coming under two different groups can be made, nevertheless, it is essential that such a classification must be founded on an intelligible differentia which distinguishes the appellant from the Vice-Chancellor appointed under the Act. We are not able to find any such intelligible differentia on the basis of which the classification can be justified.
>
> It is also essential that the classification or differentia effected by the statute must have a rational relation to the object sought to be achieved by the statute. We have gone through the Statement of Objects and Reasons of the Second Amendment Bill, which became law later, as well as the entire Act itself, as it now stands. In the Statement of Objects and Reasons for the Second Amendment Bill, extracted above, it is seen that except stating a fact that the term of the office of the Vice-Chancellor has been reduced to 3 years under S. 13(1) and that S. 13-A was intended to be enacted, no other policy is indicated which will justify the differentiation. The term of office fixing the period of three years for the Vice-Chancellor, has been already effected by the First Amendment Act and, therefore, the differential principle adopted for terminating the services of the appellant by enacting S. 13-A of the Act, cannot be considered

to be justified. In other words, the differentia adopted in S. 13-A and directed as against the Appellant—and the appellant alone—cannot be considered to have a rational relation to the object sought to be achieved by the Second Amendment Act.

While a Vice-Chancellor appointed under S. 12 of the Act can be removed from office only by adopting the procedure under S. 12(2), the services of the appellant, who was also a Vice-Chancellor and similarly situated, is sought to be terminated by enacting S. 13-A of the Act. We do not see any policy underlying the Act justifying this differential treatment accorded to the appellant. The term of office of the Vice-Chancellors has been no doubt reduced under the First Amendment Act and fixed for 3 years for all the Vice-Chancellors. But, so far as the appellant is concerned, by virtue of S. 13-A of the Act, he can continue to hold that office only until a new Vice-Chancellor is appointed by the Chancellor, and that appointment is to be made within 90 days. While all other Vice-Chancellors, appointed under the Act, can continue to be in office for a period of three years the appellant is literally forced out of his office on the expiry of 90 days from the date of commencement of the Second Amendment Act. There is also no provision in the statute providing for the termination of the services of the Vice-Chancellors, who are appointed under the Act, in the manner provided under Section 13-A of the Act. By S. 13-A, the appellant is even denied the benefits which may be available under the proviso to sub-sec. (1) of S. 13 of the Act, which benefit is available to all other Vice-Chancellors."

83. In view of the aforesaid finding, the appeal was allowed and Section 5 of the Second Amendment Act introducing Section 13-A in the Act was held to be violative of Article 14 of the Constitution and was struck down as unconstitutional.

84. Mr. Rao, learned counsel for the petitioner, had placed great reliance on the above reproduced observations and had contended that the present case was fully covered by the judgment of the Supreme Court. On the other hand, learned Advocate General and Dr. Chitale, learned counsel, appearing for the respondents

had submitted that section 13-A which was introduced by Section 5 of the Second Amendment Act, was clearly directed against the appellant in that case, that in the instant case the impugned section covers the cases of the present and future Vice-Chancellors and that the observations of the Supreme Court have been made in relation to that particular Section which had been inserted only with a view to get rid of the appellant in that case. In our view, Mr. Rao, learned counsel is right that the observations of the Supreme Court clearly go to support the case of the petitioner. It has been held by us that the words "continue in" are directed only against the petitioner and have been added only with a view to force the petitioner out of the office. In view of this finding, the distinction drawn by the learned counsel for the respondents that the provisions of Section 13-A are different from the provisions of impugned Section 9-A, becomes meaningless.

85. As a result of the aforesaid discussion, we hold that the words 'continue in'—if he attains the age of 65 years' occurring in Section 9-A of the Ordinance and the Amendment Act, are discriminatory and violative of Article 14 of the Constitution, as the same are designed to operate to the detriment of—one and one person only, i.e., the petitioner, whose term had to be renewed as a result of the promise/assurance on 27th October, 1980, and, as such, have to be struck down as unconstitutional.

86. Mr. Rao, learned counsel for the petitioner, had also challenged the legality and constitutional validity of the Ordinance on the ground that the Ordinance is not a normal form of legislation and more so in respect of the matters concerning Universities and that too in the matter of fixation of the age of the Vice-Chancellors. According to the learned counsel, issuance of the Ordinance has to be in the nature of exception as the normal process of law making is through legislation and that the exception in the shape of Ordinance has to be construed very strictly and conditions stipulated in Article 213 have to be rigorously satisfied. What was sought to be argued by the learned counsel was that in the instant case no circumstance existed which could warrant the issuance of the impugned ordinance.

87. On the other hand, it was submitted by the learned Advocate General that for the purpose of the present petition, it was

not necessary to go into the validity of the Ordinance as the same had been repealed by the Amendment Act and that the purpose and the sufficiency of circumstances cannot be gone into. Dr. Chitale, learned counsel appearing for respondent No. 1, had also urged that the Court could not go into the circumstances leading to the issuance of the Ordinance and that the issue regarding the legality of the Ordinance was not justiciable. According to the learned Counsel, the constitutional validity of the Ordinance could not be challenged on the ground that the Governor was not really satisfied with respect to the conditions mentioned in Article 213 of the Constitution or that those conditions did not exist and that his satisfaction was not real or that the satisfaction was based on extraneous considerations and was *mala fide*.

88. The Ordinance has been repealed by the Amendment Act. Since the impugned provision so far as it affects the petitioner adversely is being struck down by us as violative of Article 14, we refrain from expressing any opinion on the extent of the jurisdiction of this Court to examine whether the conditions relating to the satisfaction of the Governor were fulfilled and on other allied points raised on either side by the learned counsel for the parties with regard to the constitutional validity of the Ordinance.

89. I would now pass on and advert to the plea of the petitioner that the issuance of the Ordinance and the enactment of the Amendment Act are as a sequal of the malice borne against him by the Governor and the Chief Minister of Haryana. The learned counsel had read out to us from the petition the allegations of *mala fide*. These allegations have been emphatically denied by Shri G. D. Tapase, who has been made a respondent in his capacity as the Chancellor of the University and not the Governor, and the Chief Minister.

90. On the respective contentions of the learned counsel for the parties, which were advanced before us, the point of *mala fide* has two aspects, i.e.. (i) legal and (ii) factual.

91. On legal aspect, it was submitted by Mr. Rao, learned counsel for the petitioner that the *mala fide* of Legislature can legally be gone into by Courts of law, that in the instant case, sufficient proof has been placed on the file to show that the issuance of Ordinance and the enactment of the Amendment Act are as a result

of the malice borne by the Governor and the Chief Minister against the petitioner, that the position of a Minister as it obtains today and also as reflected by Rules of Business, is quite different from that of a Legislator, that the Chief Minister represents the mind and will of the Council of Ministers, that nothing can go against the will of the Chief Minister and that in this situation, it was not at all necessary to implead all the Ministers nor was it at all necessary to bring out facts and figures for showing the individual malice of the Council of Ministers. Mr. Rao further submitted that once malice was proved against respondent No. 2, then considering the pre-eminence of Chief Minister's status and position, malice would be presumed. It was further submitted by the learned counsel that it was not at all necessary to implead the Governor or all the Ministers of the State when the State is a party which effectively represents them. In support of his contention that the allegations of *mala fide* can legally be gone into against the Legislature, the learned counsel relied on a Full Bench judgment of this Court in *Hardwari Lal* v. *Election Commission of India etc.* (26).

92. On the other hand, it was submitted by Mr. U. D. Gour, learned Advocate-General that no *mala fide* could be attributed to the Legislature, that the vires of an Act cannot be gone into on the ground of *mala fide* and that in case the legislative competency is established, then in determining the constitutional validity of a statute, the question of malice is immaterial.

93. Dr. Chitale, appearing for respondent No. 1 supported the stand taken by the learned Advocate-General and in addition contended that the petitioner has not laid factual foundation for proving *mala fide* of the Legislature inasmuch as no data regarding the members present, number of members who voted for and against the enactment, and the influence that was exercised by the Chief Minister on the members who voted for the enactment, has been supplied, that on the basis of the allegations made against the Chief Minister alone, without impleading all the members of the Assembly, this question could not effectively and properly be decided nor could legally an adverse finding be recorded against those who are not present before this Court. It was also submitted that if the legislative Act cannot be invalidated on the ground of *mala fide*, then the Ordinance also gets the protection as the issuance of the Ordinance

(26) I.L.R. (1977) 2 Punjab and Haryana 269.

is also a legislative function, and, therefore, the same principles would apply in the case of Ordinance also. An argument was also advanced that the Governor acts on the advice of the Council of Ministers and therefore, the personal motive or *mala fide* of the Governor does not come into play at all. Further, the Governor has not been made a party nor has any allegation of *mala fide* been made against him in that capacity and that whatever allegation has been made, is against Shri G. D. Tapase in his capacity as Chancellor of the University and as such the allegation of *mala fide* against the Governor cannot be gone into.

94. Dr. Chitale had also contended that the law laid down in *Hardwari Lal's case* (supra) has no applicability as in that case, the resolution of the House had been assailed on the ground of *mala fide*. According to the learned counsel, legality of the exercise of legislative power can never be challenged on the ground of *mala fide*.

95. On a careful consideration of the entire matter, I find that it would not be necessary in this case to go into the question whether the allegations of *mala fide* can be gone into against the Legislature or not as the petitioner has virtually failed to establish any *mala fide* against the Legislature or the Governor as such. In the petition, he has made allegations only against the Chief Minister and Shri G. D. Tapase in his capacity as Chancellor. No allegation has been made against any member of the Assembly or the members of the Council of Ministers. The Governor, the members of the Council of Ministers or the members of the Legislative Assembly have not been impleaded as respondents. There is absolutely no suggestion on the file that the Legislators had exercised their privilege of vote against their will or for consideration other than their own judgment. The petitioner has not even alleged that the Bill was passed as a result of any fiat by respondent No. 2 against whom unsubstantiated allegations of *mala fide* have been made. The learned counsel for the petitioner has tried to establish the plea of *mala fide* without laying any foundation for the same purely on conjectures. The attack on the ground of *mala fide* thus must necessarily fail and the Ordinance and the Amendment Act do not suffer from any infirmity on this score.

96. Though in view of my finding on the legal aspect, it is not at all necessary to deal with the factual allegations of *mala fide*, made against respondent Nos. 1 and 2, yet as lot of emphasis during

the course of arguments had been laid on the allegations of *mala fide*, we have decided to deal with those allegations on merit.

97. In the petition, the petitioner has started by saying that in the year 1977, Shri Bhajan Lal had defected from the Congress Party to the newly formed Janata Party and was contesting elections to the Haryana Vidhan Sabha in June, 1977 as a Janata Party candidate, that the petitioner actuated purely by spirit of public service, had brought out a long pamphlet in which he described in some detail the shady past of Janata Party candidates including that of Shri Bhajan Lal, that Shri Bhajan Lal belongs to a small sect of Bishnois in Haryana and has been out to help his Bishnoi compatriots, in ways, fair or foul, that when respondent No. 2 was a Minister in Shri Devi Lal's government, he insisted on the admission of one Mohinder Singh Bishnoi to the post-graduate course in the Medical College, Rohtak, that Mohinder Singh Bishnoi did not make the merit and the petitioner had to send a letter of apology to respondent No. 2 on 10th of May, 1979, that respondent No. 2 still insisted on his admission, that the petitioner felt compelled to increase the number of seats in the Department of Medicine and to admit him, that similarly respondent No. 2 wanted admission of one Sanjiv Mehta, son of Shri B. L. Mehta of Bombay in the University, that the petitioner showed his inability to admit that boy and thereby earned the displeasure of respondent No. 2, that during one of the visits to Rohtak, respondent No. 2 personally gave to the petitioner a list of 13 students who were seeking admission to M.B.B.S. course, that one of them was related to Som Dutt, Private Assistant to respondent No. 2, that another slip was brought to the petitioner by somebody to whom it had been given by Ram Narain, Senior P.A. to respondent No. 2, and that in spite of his best efforts, the petitioner could not oblige respondent No. 2, which caused displeasure to respondent No. 2.

98. It has been further averred that the petitioner had suspended Dr. K. N. Garg, officiating Principal of the Medical College on 12th of April, 1978, that amongst the serious charges against him was the charge that he had made a false representation to the Shah Commission regarding emergency excesses and that without completing the inquiry and in order to embarrass and defy the petitioner, Dr. K. N. Garg was reinstated and Dr. Mahrotra, who was acting as Director-Principal, was removed to rehabilitate Dr. K. N.

Garg with a view to smoothen the way for admission of Miss Sunita Rani and to enable her to appear in the examination alongwith her batch as Dr. Mehrotra was of the view that she should not be allowed to appear alongwith the other students of her batch and instead appear subsequently. The petitioner has also averred that he had given certain adverse remarks in the Annual Confidential Reports of various teachers, but the Chief Minister wished to reconsider/review the same.

99. It was also submitted that on 17th of August, 1979 Dulat Commission was appointed by the Haryana Government to inquire into the allegations made by Janata Legislators against the petitioner that on the appointment of the Commission, respondent No. 2 on 8th of September, 1979 had asked the petitioner to resign or proceed on leave, that as the petitioner was unwilling to go on leave, respondent No. 2 had made a statement which appeared in the press on 10th of September, 1979 that the petitioner who was unwilling to go on leave, was being suspended and that an Ordinance was got promulgated by respondent No. 2 which empowered the Chancellor to suspend the Vice-Chancellor, to change the terms and conditions of his appointment and to terminate Vice-Chancellor's services on three months' notice or on payment of three months salary.

100. On the basis of the aforesaid facts, the learned counsel urged that respondent No. 2 was ill-disposed and bore grudge against the petitioner.

101. On the other hand, it was submitted by the learned Advocate-General that the allegations of *mala fide* which have been made against respondent No. 2, are baseless and false, and have been made in an irresponsible and reckless manner. Coming to the individual cases, it was urged that admittedly the petitioner had increased the seats and had admitted Mohinder Singh Bishnoi. In this situation, it could hardly be believed that respondent No. 2 would bear grudge against the petitioner who on his own showing had increased the number of seats and carried out the wish of the Chief Minister by admitting Mohinder Singh Bishnoi. Regarding the case of Sanjiv Mehta, respondent No. 2 has shown his inability to remember if he ever made any recommendation about him to the petitioner. Coming to the case of Miss Sunita Rani, it was contended that one seat was reserved for the nominee of the Chief

Minister and that on compassionate grounds, he had nominated Miss Sunita Rani against that one seat and in this situation to say that the nominee, on merit, did not deserve to be nominated, is meaningless.

102. Regarding giving of the list of candidates, the learned Advocate-General drew our attention to the reply of respondent No. 2 which reads as under :—

> "In regard to the allegation contained in clause (c) of sub-para (iii) of para 11, it is wholly incorrect that the answering respondent had handed over a list of 13 students (Annexure P-16) to the petitioner.
>
> The matter was thrashed out by the Division Bench which heard the case for about two weeks. My counsel before the Division Bench had brought to my notice that though in the writ petition P/16 was shown as one document, the original had not been produced by the petitioner as was the requirement of the rules. Though the counsel had asked the Court for production of the Original by the petitioner who at first pointed out that the original must be with the University. My counsel had contacted the University only to be told that the Original of P/16 was not with the University authorities. It was, thus, that on 26th November, 1980 the petitioner produced the two documents forming P/16. Before that date, the petitioner had not disclosed that P/16 was not one but two documents.
>
> The petitioner is highly educated man. He takes note of every slip that he received and preserved it. It is difficult to believe that he would forget about two slips and mentioning the two documents as one P/16. It is unbelievable that he will not realise this omission till the original was got produced from him by the Court on 26th November, 1980.
>
> Thus, it became inevitable for my counsel to find out from Shri Ram Narain, my P.A. as to how the slip attributed to him had come into the possession of the petitioner.

Shri Ram Narain has disclosed (*vide* R2/1) that he had been P.A. to Shri Hardwari Lal when he was a Minister. It was also disclosed that his service as P.A. were requisitioned by the petitioner at a different stage. It was also disclosed that Shri Ram Narain had personal cordial relations with the petitioner and that in that capacity he had given the slip for admission of a student known to him (Ram Narain) on his own behalf and not on behalf of Mrs. Bhajan Lal whose name was not on the slip at the time he had delivered it to the petitioner.

If the subsequent explanation is ignored, the assertion in the writ petition implied that the list P/16 had emanated from Mrs. Bhajan Lal.

The above narration leaves no manner of doubt that the petitioner prepared List P/16 to prompt his plea of *mala fide* which has otherwise no substance at all."

103. So far as the reinstatement of Dr. K. N. Garg is concerned, the learned Advocate-General contended that the petitioner was unnecessarily interfering with the affairs of the Medical College in spite of the fact that the same had been taken over by the State Government, that the petitioner had no business or control over the affairs of the Medical College and it was for the Governing Body which was to run the affairs of the Medical College, to decide about the reinstatement of Dr. K. N. Garg. Regarding the giving of adverse remarks to faculty members, it was contended by Mr. U. D. Gour, learned Advocate-General that some of the adverse remarks which the petitioner had given to some of the faculty members, were not even conveyed by the petitioner and that when the same were conveyed, the aggrieved persons filed appeals and ultimately on consideration of the entire matter, the remarks were expunged.

104. Regarding the making of press statement by respondent No. 2, it was submitted by the learned Advocate-General that the same has been denied by respondent No. 2 and no reliance can be placed on such statements.

105. After giving our thoughtful consideration to the entire matter, we find that the petitioner has miserably failed to prove any

allegation of *mala fide* against respondent No. 2. The instances which have been given, are flimsy. Some of them are wholly extraneous and have even no relevancy. The petitioner takes offence even with regard to the matters with which he has no concern. petitioner had recorded some adverse remarks against certain Lecturers of the Medical College as the Principal executive Head of the Medical College, Rohtak up to August, 1978. The control of the Medical College had been transferred from the University to the State Government sometime in 1978. A representation was made to respondent No. 2 on behalf of the Haryana State Medical Teacher's Association that the decision of their cases of Efficiency Bar and redesignation be expedited. As the earlier Governing Body had been abolished, a decision had to be taken as to which authority would deal with those cases. It was on this score that the matter was placed before the Governing Body for decision, which decided to convey the adverse remarks to the employees concerned and to deal with the individual cases.

106. In the wake of these facts, it is improper to impute any motive to respondent No. 2. It would be pertinent to observe that it was shown to us from the record that in some cases, the adverse remarks given by the petitioner were not even conveyed to the teachers concerned. After the taking over of the Medical College, the aggrieved persons knocked the doors of the Governing Body for the redress of their grievances. Surprisingly enough, the petitioner treats this to be an act of *mala fide* against respondent No. 2.

107. So far as the case of Dr. K. N. Garg is concerned, he has been reinstated without any prejudice to the enquiry which has been instituted against him. But again, we fail to understand as to what grouse can the petitioner have with a matter with which he is not concerned. It appears that the petitioner expects everyone high or low to abide by his decision, wrong or right and in case anyone does exercise his discretion or jurisdiction, then that act of his is labelled as an act of *mala fide*.

108. Coming to the allegation of the petitioner that some lists were given by respondent No. 2 for getting certain candidates admitted, suffice it to observe that the same does not stand proved. Respondent No. 2 in his reply, reproduced in the earlier part of the judgment, has clearly exhibited that the petitioner has unnecessarily

tried to involve respondent No. 2 and has produced certain lists with which the latter had no concern. The manner in which the two slips have been shown as one document, creates a suspicion in our mind about the genuineness of these lists. The affidavit filed by Ram Narain further makes it clear that it was he who because of his personal relations, had given some chit to the petitioner and that chit did not bear the signature of Mrs. Bhajan Lal. As earlier observed, the averments made by respondent No. 2 clearly belie the plea put forth in this respect by the petitioner.

109. Coming to the news-items appearing in the newspapers, suffice it to observe that no reliance can be placed on them and have just to be ignored in view of the judgment of the Supreme Court in *Samant N. Balkrishan etc.* v. *George Fernandez and others,* (25), wherein it has been observed thus :—

> "A news item without any further proof of what had actually happened through witnesses is of no value. It is at best a second-hand secondary evidence. It is well known that reporters collect information and pass it on to the editor who edits the news item and then publishes it. In this process the truth might get perverted or garbled. Such news items cannot be said to prove themselves although they may be taken into account with other evidence if the other evidence is forcible."

Moreover, the making of these statements has been specifically denied by respondent No. 2.

110. So far as the allegations of *mala fide* against respondent No. 1 are concerned, the same have been made against him in his capacity as Chancellor and not as the Governor of State. In this situation, it is not at all necessary to go into the merits of those allegations. However, even on merits there is no substance in those allegations. Respondent No. 1 has specifically denied these allegations. The petitioner has not been able to prove and substantiate any of these allegations. It may be observed, the petitioner has levelled some of the allegations in an irresponsible manner. Thus, we are constrained to hold that the petitioner has failed to prove the allegations of *mala fide,* both against respondent No. 1, as well as respondent No. 2.

(25) A.I.R. 1969 S.C. 1201.

111. Having adjudicated upon the merits of the controversy, I would now notice an important preliminary objection which had been raised on behalf of respondent No. 1. It was contended by Dr. Chitale, learned counsel, that Shri G. D. Tapase, Governor of Haryana, is the *ex officio* Chancellor of the University by virtue of his office and that no writ will, therefore, lie against him because of the protection under Article 361 of the Constitution of India. On the other hand, it was submitted by Shri Rao, learned counsel for the petitioner, that the immunity given by Article 361 was confined to the exercise and performance of the powers and duties of the office of Governor under the Constitution and for acts done thereunder; that the office of the Governor is separate from that of the Chancellor; that while performing his duties the Chancellor does not act on the aid and advice of the Council of Ministers ; that the office of the Chancellor is created under the Statute and that no immunity as envisaged under Article 361 of the Constitution of India is available to the Chancellor.

112. Before examining the tenability of the arguments advanced by the learned counsel appearing for the parties, it is necessary to notice the provisions of Article 361 of the Constitution of India, which read as under:—

> "(1) The President, or the Governor of a State, shall not be answerable to any court for the exercise and performance of the powers and duties of his office or for any act done or purporting to be done by him in the exercise and performance of those powers and duties :
>
> Provided that the conduct of the President may be brought under review by any court, tribunal or body appointed or designated by either House of Parliament for the investigation of a charge under article 61:
>
> Provided further that the nothing in this clause shall be construed as restricting the right of any person to bring appropriate proceedings against the Government of India or the Government of a State.
>
> (2) No criminal proceedings whatsoever shall be instituted or continued against the President, or the Governor of a State, in any court during his term of office.

(3) No process for the arrest or imprisonment of the President, or the Governor of a State shall issue from any court during his term of office.

(4) No civil proceedings in which relief is claimed against the President, or the Governor of a State, shall be instituted during his term of office in any court in respect of any act done or purporting to be done by him in his personal capacity, whether before or after he entered upon his office as President, or as Governor of such State, untill the expiration of two months next after notice in writing has been delivered to the President or the Governor, as the case may be, or left at his office stating the nature of the proceedings, the cause of action therefor, the name, description and place of residence of the party by whom such proceedings are to be instituted and the relief which he claims."

An analysis of the aforesaid provisions which prescribe the limits of the Governor's immunity against civil and criminal proceedings would show the framers of the Constitution have given personal immunity from legal action, whether during office or thereafter, to the President or the Governor of any act done or purported to be done in exercise of their powers and duties of their office as well as immunity from the criminal proceedings or from arrest or imprisonment by or under any process of a Court during their term of office. Insofar as civil action against the President or the Governor in their individual and personal capacity is concerned, whether those actions arose out of acts done before or after they entered upon their respective offices, there is no immunity from any action in a Court of Law against them except the immunity from arrest under clause (3) of the Article, and the condition that a suit cannot be filed before the expiration of two months next after notice in writing has been delivered to them specifying the details mentioned in clause (4).

113. On the respective contentions of the learned counsel for the parties, the short question that needs determination is whether the immunity envisaged under Article 361(1) extends even to the exercise and performance of the powers and duties conferred on the Governor under any Act or the Statute not in his capacity as Governor but in a different capacity held by him by virtue of his office as Governor.

114. Though various authorities were cited and lot of arguments were advanced yet as I look at the matter, I find that answer to the aforesaid question would solely depend on the true construction of the expression 'the exercise and performance of the powers and duties of his office' occurring in clause (1) of Article 361.

115. The powers and duties of the office apparently embrace the powers of the Governor expressly conferred by the Constitution as well as those conferred by any law or statutory rules. Under the Constitution, there are some Articles which indicate the vesting of the entire executive power of the State in the Governor in respect of matters in regard to which the Legislature of the State has power to make law.

116. Under Article 154 the executive power of the State shall be vested in the Governor and shall be exercised by him either directly or through officers subordinate to him in accordance with the Constitution. Article 161 provides that the Governor of a State shall have the power to grant pardons, reprieves, respites or remissions of punishment or suspend, remit or commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the State extend. Article 162 says that the executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws. A combined reading of these three Articles clearly indicates that the entire executive power of the State vests in the Governor in respect of matters in regard to which the Legislature of the State has power to make laws. In regard to the same matters the Governor has also got the limited judicial powers, referred to above.

117. Our attention was also drawn to other Articles conferring some powers on the Governor. Article 165 gives power to the Governor to appoint the Advocate-General. Article 166(3) gives power to the Governor to make rules for more convenient transaction of business of the Government of the State, and for the allocation among Ministers of the said business in so far as it is not business with respect to which the Governor is by or under this Constitution required to act in his discretion. Article 192 empowers the Governor to decide the question as to the disqualifications of members of the Legislature. Article 200 talks of the power of the Governor to give assent to a Bill passed by the Legislature, Article

213 gives power to the Governor to promulgate Ordinance. Under Article 309 power is given to the Governor to make rules regulating the recruitment and conditions of service of persons serving the State. Under Article 316 the Governor is empowered to appoint members of the State Public Service Commission.

118. These are all powers expressly conferred by the Constitution. But besides these powers and duties, there may be powers and duties of the office which, though not expressly provided for by any Article of the Constitution, result from the working of several Articles in the Constitution. What I mean to say is that the Constitution may also enable other bodies or authorities to confer the powers or impose the duties on the Governor subject to the provisions of the Constitution. The other bodies may therefore, make laws conferring certain powers on the Governor. Therefore, there are many ways by which a power may be conferred on the Governor qua Governor which will enable him to exercise that power by virtue of his office as Governor. There can be no gainsaying that all the powers exercisable by a Governor by virtue of his office can be exercised only on the advice of the Council of Ministers except in so far as the constitution expressly or perhaps by necessary implication provides otherwise. See in this connection a passage from the judgment of the Supreme Court in Samsher Singh v. State of Punjab **and another** (26), which appears at page 2202 of the report in para 48 and reads thus:—

> "The President as well as the Governor is the Constitutional or formal head. The President as well as the Governor exercises his powers and functions conferred on him by or under the Constitution on the aid and advice of the Council of Minister, save in spheres where the Governor is required by or under the Constitution to exercise his functions in his discretion. Wherever the Constitution requires the satisfaction of the President or the Governor for the exercise by the President or the Governor of any power or function, the satisfaction required by the Constitution is not the personal satisfaction of the President or Governor but the satisfaction of the President or Governor in the Constitutional sense in the Cabinet system of Government, that is, satisfaction of his Council of

(26) A.I.R. 1974 S.C. 2192.

Ministers on whose aid and advice the President or the Governor generally exercises all his powers and functions. The decision of any Minister or officer under rules of business made under any of these two articles 77(3) and 166(3) is the decision of the President or the Governor respectively. These articles did not provide for any delegation. Therefore, the decision of Minister or officer under the rules of business is the decision of the President or the Governor."

In that very judgment it has further been observed in para 57 thus:—

"For the foregoing reasons we hold that the President or the Governor acts on the aid and advice of the Council of Ministers with the Prime Minister at the head in the case of the Union and the Chief Minister at the head in the case of State in all matters which vest in the executive whether those functions are executive or legislative in character. Neither the President nor the Governor is to exercise the executive functions personally."

119. Having adverted to the relevant provisions of the Constitution, it is now to be seen whether the powers exercised by the Chancellor have any relation to the exercise and performance of the powers and duties of the Governor. Though earlier also I have referred to certain relevant provisions of the Act and the Statute, yet for facility of reference it is necessary to make mention of those provisions here again. Under section 3 of the Act the first Chancellor of the University is appointed by the Government. Under section 8 the Chancellor is mentioned as one of the officers of the University. Under sub-section (2) of section 8, the Chancellor is empowered to appoint a person to be Pro-Vice-Chancellor on such terms and conditions as he may think fit. Under section 19 the Chancellor is empowered to require or direct any officer or authority of the University to act in conformity with the provisions of the Act and the Statute, Ordinances and Regulations made thereunder. Under sub-section (2) it is further provided that the power exercised by the Chancellor under sub-section (1) shall not be called in question in any Civil Court.

120. Under the first Statutes of the University, Statute 2 provides that the Governor of Haryana shall be the ex-officio Chancellor of the University. Statute 3 says that the Chancellor by virtue of his office will be the head of the University. In sub-clause (2) of Statute 3 it is provided that the Chancellor shall, if

present, preside at the convocation of the University for conferring degrees and at all meetings of the Court. Under Statute 4(6) complete power is given to the Chancellor to appoint a Vice-Chancellor on such terms and conditions as he lays down. Under clause (8) of Statute 4 power is given to the Chancellor to fill in any casual vacancy in the office of the Vice-Chancellor. Statute 10 provides the constitution of the Court in which the Chancellor is mentioned as one of the *ex officio* members. Under Statute 26 power of relaxing any condition mentioned in the Statute is given.

121. As has been observed earlier, and that is the scheme of the Act and the Statutes, that in the University affairs there cannot be any interference from the State Government. The State Government is an authority quite distinct from the authority of the Chancellor. The State Government cannot advise the Chancellor to act in a particular manner. The University is a statutory body, autonomous in character. Under the Act and the Statutes, the Chancellor has been given certain powers exercisable by him in his absolute discretion without any interference from any quarter. For the appointment of the Vice-Chancellor or the Pro-Vice-Chancellor, he is not required to consult the Council of Ministers. It is correct that by virtue of his office the Governor becomes the Chancellor of the University but while discharging the functions of his office he does not perform any duty or exercise any power of the office of the Governor. While discharging the functions of the office, the Chancellor does not act on the aid and advice of the Council of Ministers. It would not be correct to say that as the Governor holds the office of the Chancellor of the University by virtue of his office, therefore, the powers and duties he exercises or peroforms under the relevant Act or the Statute, are the powers and duties of his office as Governor. The Governor is vested with certain powers and duties under the Constitution that normally are exercised or performed on the aid and advice of Council of Ministers and, therefore, it becomes necessary to give immunity to such person in the discharge of the duties of his office. But this is not the position in the case of the Chancellor as he, under the Act, has his own independent existence and exercises his power without any interference from any quarter. The office he holds is a statutes office and is quite distinct from the office of the Governor.

122. If immunity is extended to the Chancellor also, then it would lead to anomalous results, that is, that in respect of action

of the Governor as the head of the State executive, appropriate proceedings against the State would be open, while it would not be permissible for any person to question the action of the Chancellor in any proceedings, for the reason that the Chancellor's action not being the action of the Governor as the head of the State executive, the second proviso of Article 361(1) would have no applicability. In this view of the matter, I do not find any escape from the conclusion that the powers and duties exercised and performed by the Chancellor under the Act or the Statutes of the University have absolutely no relation to the exercise and performance of the powers and duties of the office of Governor.

123. Dr. Chitale had placed reliance on some judgments The first case to which reference may be made is *Biman Chandra Bose* v. *Dr. H. C. Mukherjee, Governor, West Bengal and others* (26). In that case, the Governor, in exercise of the power conferred by sub-clause (e) of clause (3) of Article 171 of the Constitution of India, read with clause (5) of the said Article, had nominated some persons as members of the Legislative Council of the State of West Bengal. The said nomination was challenged by one Biman Chandra Bose on the ground that he fulfilled all the conditions required for nomination under Article 171(5) and that none of the persons nominated by the Governor, fulfilled the requirements of the said Article. At the time of the hearing of the petition, a preliminary objection was raised by the Advocate-General that because of the provisions of Article 361 of the Constitution of India, the petition was not maintainable as against the Governor. On consideration of the entire matter, the learned Judge upheld the objection. The other case is *Laxman Singh* v. *Raj Pramukh of Madhya Bharat and others* (27). The facts of that case are that the petitioner who was a Jagirdar was not required under any law to introduce within his Jagir either Zamindari or Raiyatwari system of land administration and that therefore, he had leased out in 1909, lands to the non-applicant tenants Nos. 4 to 31 under separate contracts. The leases were revised by the petitioner in 1938 and the rents enhanced. Since the revision of the leases, the tenants paid enhanced rent until 1949. In that year, on complaint by the tenants to the Madhya Bharat Government, the Jagir Commissioner passed an order directing the petitioner to realise rent according to the Pattas issued in 1908 and to refund to

(26) A.I.R. 1952 Calcutta 799.

(27) A.I.R. 1953 M.B. 54 (Gwalior Bench).

tenants the excess amount realised from them since the revision of rent in 1938. The petitioner appealed to the Madhya Bharat Government against the said order of the Jagir Commissioner and the order was upheld in appeal. In the petition filed in the High Court, an objection was raised that the petition was not maintainable insofar as it seeks relief against the Rajpramukh in view of the provisions of Article 361. This contention was upheld.

124. From the facts of the afore-mentioned two cases, it would be quite evident that the same are distinguishable and have no applicability to the facts of the case in hand.

125. The next case that needs detailed reference and on which both the learned counsel relied is in *Dr. S. C. Barat and another* v. *Hari Binayak Pataskar and others* (28). The facts of that case are that under section 9 of the Jabalpur University Act, 1956, the Governor of Madhya Pradesh is the Chancellor. The Chancellor, by virtue of his office, is the head of the University and the President of the Court, and when present is required to preside over the meetings of the Court and on any convocation of the University. The procedure for the appointment of the Vice-Chancellor is laid down in section 9. According to that provision. the Vice-Chancellor is appointed by the Chancellor from a panel of not less than three names recommended by a Committee constituted in accordance with sub-section (2). This Committee is constituted by the Chancellor and consists of three persons. The Committee constituted under sub-section (2) is required to submit its panel within one and a half months from the date of its constitution. The Committee submitted a panel of names. Dr. S. C. Barat and another, petitioners in that case, challenged the validity of the constitution of the Committee and further pleaded that on the basis of the recommendation by that Committee, no person could validly be appointed as Vice-Chancellor to succeed Shri Kunjilal Dubey (the continuing Vice-Chancellor) on the expiry of his term. The petition was contested on behalf of the respondents. At the time of the hearing a preliminary objection was raised, similar to the one with which we are concerned. by Shri K. A. Chitale, learned counsel appearing for the Chancellor, that the Court had no jurisdiction to entertain any proceeding whatever or issue any direction under Article 226 whatever against the Chancellor. The objection rested on Article 361 and had been raised

(28) A.I.R. 1962 Madhya Pradesh 73.

as the Governor of the State was the Chancellor of the University. The learned Judges. as would be evident from the judgment, considered the matter thoroughly in the light of the provisions of the Constitution and finally observed thus :—

> "When an Act confers power on the Governor not qua Governor but in a different capacity held by him by virtue of his office as Governor, the powers and duties conferred are not powers and duties of the office of the Governor. They are the powers and duties of a different office which the Governor holds by virtue of his office as Governor. It is altogether erroneous to say that as the other office is held by the person who is the Governor of the State by virtue of his office as Governor, therefore, the powers and duties he exercises or performs of that other office under the relevant Act are the powers and duties of his office as Governor."

The aforesaid observations clearly support the view which we are taking, but Dr. Chitale relied on the following observations of the Bench which appear in para 10 of the report :—

> "Now, section 9 of the Jabalpur University Act, 1956, does not make the Governor of the State the Chancellor of the University by virtue of his office as Governor. It says that the Governor of Madhya Pradesh shall be the Chancellor. The plain meaning of this provision is that the person who is for the time being the Governor of the State shall be the Chancellor. Section 9(1) does not say that the Governor shall be the Chancellor by virtue of his office as Governor or that the Governor shall *ex-officio* be the Chancellor. It is noteworthy that section 10(1) of the Act uses a different language in connection with the office of the Pro-Chancellor. It says that the Minister of Education shall *ex-officio* be the Pro-Chancellor. Whereas under section 9(1) it is the prestige and personality of the persons filling the office of the Governor that is made the basis of his appointment as Chancellor, under section 10(1) it is the office itself that is made the criterion for the appointment of the Minister of Education as the Pro-Chancellor.
>
> The distinction between these two modes of appointment is a real one. Thus the powers and duties that the Chancellor

> exercises or performs under the Act are not any powers or duties conferred on the Governor qua Governor or of a capacity which he occupies by virtue of his office as Governor. They are the powers and duties of a public capacity held by the personage who is also the Governor. The Chancellor's powers under the Jabalpur University Act are thus not the powers and duties of the office of the Governor and consequently the protection, provided by Article 361(1) cannot be invoked by the Chancellor in respect of the exercise and performance of the powers and duties of his office as Chancellor under the Jabalpur University Act."

On the basis of the aforesaid observations, it was sought to be argued by the learned counsel that in that case, the learned Judge rejected the preliminary objection on the ground that according to section 9 of the Jabalpur University Act, the Governor of Madhya Pradesh shall be the Chancellor, but in the instant case the Chancellor is by virtue of his office as Governor, that is, that the Governor is the **ex-officio** Chancellor of the University. It is correct that from the aforesaid observations, Dr. Chitale is justified in soliciting support for his contention but, with utmost respect, we are unable to agree with the learned Judges in *S. C. Barat's case* (supra), that the distinction between the two modes of appointment, that is, where the Governor of a State shall be the Chancellor of the University and where the Governor by virtue of his office or as **ex officio** shall be the Chancellor, would make any difference. As has been observed earlier, the real test to be seen is whether while holding the office of the Chancellor, is the Governor performing any duties or is exercising any power relating to his office? Further, it has also to be seen whether by holding the office of the Chancellor, is the Governor not holding entirely a different office and in a different capacity? If the answer to these two questions is in the negative, then the Governor as Chancellor would not be exercising or performing any power or duty in his capacity as Governor nor would the exercise or performance of the power or duty of the office of the Chancellor would have any relation to the exercise or performance of the duty of the office of the Governor. It may be observed that except the observations made in para 10, the entire judgment in **S. C. Barat's case** (supra) supports the contention of Mr. Rao and does not help the learned counsel for respondent No. 1.

126. This brings me to the next case in **Joti Prasad Upadhya** v. **Kalka Prasad Bhatnagar and others** (29). The facts of that case are that the election of one Joti Prasad Upadhya to the Uttar Pradesh Legislative Council was called in question on the ground that he was holding an office of profit under the Government of the State of Uttar Pradesh, as he had been appointed as the Vice-Chancellor of the University of Agra by the Chancellor under section 9 of the Agra University Act, 1926, and that in view of the provisions of Article 191 of the Constitution of India, was disqualified to be chosen to fill in the seat. The petition was contested on the ground that the office held by the Vice-Chancellor was under the University of Agra and not under the State Government and as such the office of the Vice-Chancellor was not an office of profit. The only point that needed determination, on the respective pleas of the parties, was whether respondent No. 1 held the office of profit under the State Government. On consideration of the relevant provisions of the Constitution and the University Act, Mathur, J., speaking for the Court, held as under:—

> "The Act clearly envisages two distinct authorities, namely, the Chancellor and the State Government. When the Legislature intentionally made a differentiation between Chancellor and the State Government, no other opinion can be formed except that it was the intention of the Legislature not to regard the Chancellor to be a part of the State Government, and while exercising his powers the Chancellor was not exercising the executive powers of the State."

It was further held as under:—

> "If the appointment of the Vice-Chancellor by the Chancellor of the University is not deemed to be an appointment made by the State Government, the Vice-Chancellor of the Agra University shall not be disqualified and can be chosen as a member of the U.P. Legislative Council. As already mentioned above, the Chancellor cannot be equated with the State Government and the two cannot be placed on the same footing and consequently an appointment made by the Chancellor cannot be deemed to have been made by the State Government."

(29) A:I:R: 1962 All. 128.

Mr. Rao, learned counsel for the petitioner, had placed great reliance on the aforesaid observations and, in our view, rightly as the same lend full support to his contention and negative the plea of respondent No. 1.

127. The only other case relevant to the point which needs reference is in **M. Ghanamani v. Governor of Andhra represented by the Chief Secy. to Govt. of Andhra and another** (30). The facts of that case are that the petitioner was a B. E. of the Madras University. He was working in the Second Circle as an Assistant Engineer. On 15th of January, 1953, an order of Government, dated 22nd of December, 1952, was served on him imposing a penalty of compulsory retirement. Against that order he preferred an appeal to the Governor of Madras. After the Andhra State was formed, the papers were transferred to the Governor of Andhra for disposal. When the petitioner wrote to the Governor of Andhra for information, he received a reply from the Secretary that his petition was sent to the Secretary to Government, P.W.D., Andhra, for disposal. One of the grounds on which the petitioner claimed relief, was that the action of the Governor in asking the Government to dispose of the appeal was without jurisdiction and reduced the provisions for an appeal to a farce, as the very authority which passed the original order was asked to dispose of the appeal. One of the points that arose for consideration before the learned Judge was whether a writ would lie in the circumstances against the Governor of Andhra. On consideration of the entire matter, the learned Chief Justice on the question of immunity as envisaged under Article 361, observed thus:—

> "Under Article 361 there is an absolute immunity for the first category of acts, but only a limited one in respect of the other two. In respect of the first he is not answerable to any Court of law. No Court can compel him to show cause or defend his action. In the case of official acts an aboslute immunity from the process of Court is given and this immunity extends not only to his official acts but also to acts purporting to be done by him in exercise of the powers conferred on him, so long as he is not guilty of dishonesty or bad faith. But this will not preclude the acts of the Governor from being questioned if

(30) A.I.R. 1954 Andhra 9.

they can be done without issuing a process on him. Indeed Art. 361 itself recognises that this immunity would not restrict the right of any person to bring appropriate proceedings against the Government."

128. From the aforesaid observations, it would be clear that three categories were formed by the learned Chief Justice in which the powers of Governor could fall. Regarding, first category under which the powers exercisable by the Governor by virtue of his office fall, it has been held that absolute immunity is available. But with regard to other two categories, that is, where powers conferred on the Governor qua Governor, but in a different capacity though he occupies that capacity by virtue of his office as Governor; and where the Governor acts in his personal capacity, like he may commit breaches of contracts entered into with third parties, the learned Chief Justice has held that only limited immunity is available.

129. Viewing the facts of this case in the light of the observations reproduced above, it is quite evident that the same do not fall in first category. So far as second and third categories are concerned, it may observed that Dr. Chitale, learned counsel for respondent No. 1, did not claim any limited immunity as his whole case was based on absolute immunity.

130. In this view of the matter, the decision in **M. Ghanamani's** case (supra), does not help the learned counsel for respondent No. 1. Rather the observations reproduced in the earlier part of the judgment favour the stand taken by Mr. Rao.

131. There is no other relevant case which needs mention except **Dr. Bool Chand's** case (supra), and that too, for this purpose only that in that case, the Chancellor was a party to the writ petition which had been filed by Dr. Bool Chand, questioning the legality of the order of the Chancellor and in that case at no stage right up to the Supreme Court, an objection was raised that the Chancellor could not be made a party as he enjoyed absolute immunity under Article 361 of the Constitution.

132. As a result of the aforesaid discussion, I hold that no absolute immunity under sub-clause (1) of Article 361 of the Constitution of India is available to the Governor for the acts done in

exercise of the power or in performance of the duties as Chancellor of the University. Hence the preliminary objection raised on behalf of the Chancellor must be and is overruled.

133. A preliminary objection had also been raised on behalf of the Advocate-General, Haryana, that certain allegations made in the petition were unnecessary and that the same deserved to be struck off under the provisions of Order 6 Rule 16, Code of Civil Procedure. It is not necessary to deal with this preliminary objection as the learned counsel for petitioner during the course of arguments, did not refer to any unnecessary, scandalous, frivolous or vexatious allegations.

134. No other point relevant for the disposal of this petition remains on which it may be necessary to express any opinion.

135. As a result of the aforesaid discussions I summarise my conclusions as follows:—

(1) Under clause (7) of statute 4, the Chancellor is competent and has power to grant renewal of the term.

(2) It is quite evident that the Chancellor had acted within the scope of his authority in laying down the term that the term of the petitioner will be renewed and that the petitioner had acted on that promise/assurance and had changed his position. In the instant case, estoppel will have to be sustained even if the same may be based on an assurance to the future because the promisor intended to be legally bound and intended his promise to be acted upon; with the result that it was so acted upon. It was a real promise — promise intended to be binding, intended to be acted upon and in fact acted upon.

(3) The provisions of Section 9-A are not only to apply to the persons who are appointed Vice-Chancellors after the promulgation of the Ordinance, but also to the persons who are in office on the date of promulgation.

(4) The words 'continue in — if he has attained the age of 65 years' occurring in Section 9-A of the Ordinance and the Amendment Act are discriminatory and violative of

Article 14 of the Constitution as the same are designed to operate to the detriment of one and one person only, i.e., the petitioner whose term had to be renewed as a result of the promise/assurance with effect from 27th October, 1980.

(5) The petitioner has tried to establish the plea of mala fide purely on conjectures without laying any foundation for the same. The attack on the ground of mala fide thus must necessary fail and the Ordinance and the Amendment Act do not suffer from any infirmity on this score.

(6) The powers and duties exercised and performed under the Statute by the Chancellor have absolutely no relation to the exercise and performance of the power and duties of the office of the Governor.

(7) No absolute immunity as envisaged in sub-clause (1) of Article 361 of the Constitution of India is available to the Governor for the acts done in exercise of the powers or in performance of the duties as Chancellor of the University.

(136) In view of conclusions (2) and (4), the writ petition is allowed and a direction is issued to the Chancellor of the University, respondent No. 1, to issue notification renewing the term of the petitioner as Vice-Chancellor with effect from 27th October, 1980. In the circumstances of the case, I make no order as to costs.

S. C. Mital, J.—I agree.

Rajendra Nath Mittal, J.—I also agree.

N.K.S.

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